



ADMINISTRATIVE REPORT

File #: 21-657

Meeting Date: 9/20/2021

Report Prepared by: Michael Hren, Principal Planner, Development Services Department

SUBJECT: Public Hearing to Consider Potential Introduction of an Ordinance for Zoning Ordinance Amendment #21-02, Initiated by the City of Merced, Amending Section 20.44.170 "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required" of the Merced Municipal Code and Adoption of a Resolution Amending the Merit-Based Selection Criteria for Cannabis Dispensaries

REPORT IN BRIEF

On March 15, 2021, the City Council directed staff to make updates to the regulations regarding commercial cannabis businesses, including expanding the zones that allow cannabis businesses, expanding operating hours for dispensaries, and several changes regarding the merit-based selection criteria for dispensaries. This Ordinance and Resolution will implement those changes.

RECOMMENDATION

City Council- Adopt a motion:

- A. Approving Environmental Review #21-21 (Categorical Exemption); and,
- B. Introducing **Ordinance 2532**, an Ordinance of the City Council of the City of Merced, California, Amending Section 20.44.170, "Regulation of Commercial Cannabis Activities- Commercial Cannabis Business Permit Required," of the Merced Municipal Code; and,
- C. Adopting **Resolution 2021-82**, a Resolution of the City Council of the City of Merced, California, Approving Updated Merit-Based Selection Criteria for Scoring Commercial Cannabis Business Permit Applications for which there are a Limited Number of Permits Available.

ALTERNATIVES

- 1. Approve, as recommended by the Planning Commission and staff; or,
- 2. Approve subject to modifications as conditioned by City Council; or,
- 3. Deny; or,
- 4. Refer back to staff for reconsideration of specific items (to be addressed in the motion); or,
- 5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Section 20.44.170 of the City of Merced Municipal Code addresses Commercial Cannabis Business Permits.

CITY COUNCIL PRIORITIES

FY 2021-22 Council Priority #1 and #3 are Public Safety and Parks & Recreation, respectively. Taxes on cannabis sales from the passage of Measure Y are specifically required to supplement these areas.

DISCUSSION

The City Council adopted Ordinance #2480 amending the Zoning Ordinance (Title 20 of the Merced Municipal Code) to regulate all commercial cannabis activities in the City of Merced on December 4, 2017. The City Council adopted Resolution #2018-1, establishing a merit-based scoring system for cannabis retail sales dispensaries, on January 16, 2018. The City Council adopted Ordinance #2498 amending Section 20.44.170 of the Merced Municipal Code, "Regulation of Commercial Cannabis Activities- Commercial Cannabis Business Permit Required," on March 18, 2019.

On March 15, 2021, the City Council directed staff to make various updates to the regulations for commercial cannabis businesses. The Planning Commission recommended approval of Zoning Ordinance Amendment #21-02 and recommended approval of the Resolution for the Merit-Based Criteria with amendments on August 4, 2021 after a public hearing. The Planning Commission's amendment to the merit-based criteria was to reduce possible points for Item 4c (security measures) by one point, to reduce possible points for Item 9a (discretionary points from selection committee) by one point, to increase points for Item 6b (ownership residence in County of Merced) by one point, and to increase points for Item 6c (ownership residence in City of Merced) by one point. Staff is in support of these modifications and is presenting the Planning Commission's amended version to City Council in the proposed Resolution at Attachment 2.

At the Planning Commission, a concern was raised by a citizen regarding the proposed changes to Section 20.44.170(L)(7)(b)(3), specifically the language that states, "Any business that is awarded points on the merit-based selection criteria for local ownership shall not be approved for any request for minor modification that proposes to reduce local ownership below the minimum threshold for which points were awarded in the first place." After additional consultation with the City Attorney's office, staff has determined that the proposed conditions outlined above cannot be applied retroactively to prior permittees but may be applied going forward to future permittees if the Ordinance is approved.

An error in the definition of "Labor Peace Agreement" in the Findings of Fact (Exhibit A of Planning Commission Resolution #4068) that erroneously referred to the State has also been corrected to refer to the City. An outline of the proposed changes to the Ordinance is also included in Exhibit A of the Planning Commission Resolution, Findings B through F.

Staff is also proposing an amendment to Section 20.44.170(E)(3)(f)(i). This language was not proposed as a part of the Planning Commission Resolution, however staff believes that it clarifies and improves the procedure for reviewing the list of schools. In the following text, strikethrough text is proposed for removal and underlined text is proposed for addition. "The City shall establish an official "List of Schools" which are located within the City of Merced by resolution of the City Council after a public hearing. Said list shall be reviewed on an annual basis on or before January 31st of each

year, and/or whenever a commercial cannabis business permit for a dispensary becomes available. If amendments are needed, the amendments shall be considered by the City Council at a public hearing.”

After the public hearing, the City Council should consider introducing the Ordinance at Attachment 1 and adopting the Resolution at Attachment 2 to implement the changes to the regulations for commercial cannabis businesses.

IMPACT ON CITY RESOURCES

The addition of an extra hour of permitted retail activity and the issuance of a fifth Commercial Cannabis Business Permit for retail sales have the potential to increase sales, and therefore taxes from Measure Y received by the City of Merced.

ATTACHMENTS

1. Draft Ordinance
2. Draft Resolution Updating Merit-Based Criteria for Dispensaries
3. Planning Commission Resolution #4068
4. Presentation

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MERCED, CALIFORNIA, AMENDING
SECTION 20.44.170, "REGULATION OF
COMMERCIAL CANNABIS ACTIVITIES -
COMMERCIAL CANNABIS BUSINESS PERMIT
REQUIRED," OF THE MERCED MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS
FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Section 20.44.170,
"Regulation of Commercial Cannabis Activities - Commercial Cannabis Permit Required,"
of the Merced Municipal Code is hereby amended to read as follows:

**"20.44.170 -REGULATION OF COMMERCIAL
CANNABIS ACTIVITIES - COMMERCIAL
CANNABIS BUSINESS PERMIT REQUIRED**

**A. Zoning Compliance and Commercial Cannabis
Business Permit Requirements**

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, C-T, B-P, I-L, and I-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted - 'X', or permitted - 'P'. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section, then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1									Additional Specific Use Standards
	Land Use Classification [4] [5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	C-T Zone	B-P Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	X	P	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	X	P	P	P	Sec. 20.44.170(h)
Dispensary [1] [2]	Pharmaceutical, medical	P	P	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1] [2]	Retail, non-medical/combined	P	P	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	X	P	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	X	P	P	P	Sec. 20.44.170(k)

Footnotes

1. Only five (5) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced at any one time.
2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.
3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).
4. If listed as 'Permitted' in a specific zone above, then that use is also 'Permitted' in Planned Development (P-D) zones that have the equivalent General Plan land use designation as that zone.
5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f).

Land Use Classifications:

Greenhouse, Commercial A - Permitted cultivation area:0 to 5,000 square feet

Greenhouse, Commercial B - Permitted cultivation area:5,000 to 10,000 square feet

Greenhouse, Commercial C - Permitted cultivation area:10,000 to 22,000 square feet

Greenhouse, Commercial D - Permitted cultivation area: 22,000 square feet

B. Cultivation of Cannabis for Personal Use in Residential Zones

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(8)(I)(i) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owners right to deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or

cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

- ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

C. Definitions

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **'Applicant'** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **'Cannabis'** means all parts of the 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 marijuana. 'Cannabis' also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, 'cannabis' does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **'Cannabis waste'** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **'Canopy'** means all of the following:

- a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **'City'** means the City of Merced.

6. **'Commercial cannabis business permit (CCBP)'** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **'Commercial cannabis activity'** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **'Commercial vehicle'** means a vehicle as defined in Vehicle Code section 260.

9. **'Concentrated cannabis product'** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **'Cultivation'** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **'Customer'** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **'Day Care Center'** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **'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, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.

14. **'Delivery employee'** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **'Dispensary'** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **'Display'** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **'Display case'** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **'Distribution'** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **'Edible cannabis product'** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **'Fully Enclosed and Secure Structure'** means a fully-enclosed space within a building that complies with the California Building Code ('CBSC'), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or

more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two-inch by four-inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **'Free sample'** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **'Greenhouse'** means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a 'Fully Enclosed and Secure Structure' as defined above in 20.44.170(C), Subsection 20.

23. **'Indoors'** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 20.

24. **'Labor Peace Agreement'** means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the City's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

25. **'License'** means a state license issued under this division, and includes both an A-license and an M- license, as well as a testing laboratory license.

26. **'Limited-access area'** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.
27. **'Medical' or 'Medicinal'** have the same meaning under the terms of this ordinance.
28. **'Medical cannabis goods'** means cannabis, including dried flower, and manufactured cannabis products.
29. **'Medical cannabis patient'** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.
30. **'Manufacturer'** means a licensee 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.
31. **'Manufacturing' or 'manufacturing operation'** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.
32. **'Nonvolatile solvent'** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.
33. **'Operating hours'** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.
34. **'Owner' or 'Ownership interest'** means an interest

held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an 'owner' of the commercial cannabis business.

35. **'Package'** and **'Packaging'** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. 'Package' and 'packaging' does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

36. **'Patient or qualified patient'** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

37. **'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.

38. **'Pest'** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

39. **'Physician's recommendation'** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

40. **'Premises'** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

41. **'Pre-roll'** means dried cannabis flower rolled in paper prior to retail sale.

42. **'Primary Caregiver'** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

43. **'Private security officer'** has the same meaning as that

term as defined in the State of California Business and Professions Code section 7574.01.

44. **'Publicly owned land'** means any building or real property that is owned by a city, county, state, federal, or other government entity.

45. **'Purchase'** means obtaining cannabis goods in exchange for consideration.

46. **'Purchaser'** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

47. **'Quarantine'** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

48. **'Retail area'** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

49. **'School'** means those sites upon which full-time instruction in any of grades K through 12 is provided where the primary purpose is education, as determined in the sole discretion of the City Council, and which are identified as a school on the City's official List of Schools' as provided in Section 20.44.170(E)(3)(f)(i). 'School ' does not include any private site upon which education is primarily conducted in private homes.

50. **'Security monitoring'** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

51. **'Selection Panel'** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

52. **'Sell,' 'sale,' and 'to sell'** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of

cannabis goods 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 goods by a licensee to the licensee from whom such cannabis goods were purchased.

53. **'Sublet'** means to lease or rent all or part of a leased or rented property.

54. **'State'** means the State of California.

55. **'Testing Laboratory'** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

56. **'Vehicle alarm system'** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

57. **'Volatile solvent'** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

58. **'Wholesale'** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

59. **'Youth Center'** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

D. Compliance with State and Local Licensing Requirements

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

E. General Provisions for Commercial Cannabis Activities in the City of Merced

1. Commercial Cannabis Business Permit Required

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

- i. Cultivation
- ii. Distribution
- iii. Manufacturing
- iv. Retail sales (Dispensary)
- v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

- i. A felony offense listed in California Health and Safety Code Section 11590.
- ii. A felony offense listed in California Penal Code Section 667.S(c).
- iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.
- iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.
- v. A felony conviction involving fraud, deceit, or embezzlement.

- vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

- f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

- g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7), and does not run with the land or with the business.

- 1. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

- a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

- b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

- c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

- d. Training records, including but not limited to the content of the training provided and the names of the employees

that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

J. Proof of insurance.

2. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20)

feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permits submitted to the City. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted to the City. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

(i) The City shall establish an official "List of Schools" which are located within the City of Merced by resolution of the City Council after a public hearing. Said list shall be reviewed on an annual basis on or before January 31st of each year, and/or whenever a commercial cannabis business permit for a dispensary becomes available. If amendments are needed, the amendments shall be considered by the City Council at a public hearing.

g. No physical modification of the permitted premises is allowed without written prior permission by the

City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

J. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed 'abandoned' and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an 'A' rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's 'doing business as' name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. Said notification shall be addressed to the Director of Development Services or designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

- i. Emergency action response planning as necessary
- ii. Employee accident reporting and investigation policies
- iii. Fire prevention
- iv. Hazard communication policies, including maintenance of material safety data sheets
- v. Materials storage and handling policies
- vi. Personal protective equipment policies
- vii. Operation manager contacts
- viii. Emergency responder contacts
- ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

F. Additional Regulations for Dispensary and Retail Sales of Cannabis

1. Only five (5) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.

3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.

4. Restrooms shall remain locked during business hours and not open to the public.

5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.

6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.

7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.

8. Security guards are permitted, but not mandated, to carry firearms.

9. All cannabis products available for sale shall be securely locked and stored

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.
11. Medical Cannabis Dispensaries shall maintain the full name, address, and telephone number(s) of all patient members to whom the business provides medical cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.
12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.
13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.
14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 10 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.
15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.
16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: 'Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited.'
17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult

use and medicinal cannabis. A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol, or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive-through facility.

G. Additional Regulations for Commercial Cannabis Delivery Services

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of \$1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.
10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).
11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed \$3,000 at any time.
12. Each delivery request shall have a receipt prepared by the dispensary with the following information:
 - a. Name and address of the licensed dispensary;
 - b. The name of the employee who delivered the order;
 - c. The date and time the delivery request was made;
 - d. The complete delivery address;
 - e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;
 - f. The total amount paid for the delivery including any fees or taxes; and
 - g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.
13. The delivery business shall provide a flyer that spells out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

H. Additional Requirements for Manufactured Cannabis Businesses

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.
2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.
3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.
4. Inspections by the City Fire Chief or designee may be conducted anytime during the business' regular business hours.
5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security

measures in place on the premises. Outdoor manufacturing of cannabis is expressly prohibited.

I. Additional Requirements for Cannabis Cultivation Businesses

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.
2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.
5. All outdoor lighting used for security purposes shall be shielded and downward facing.
6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.
7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

J. Additional Requirements for Cannabis Testing

Laboratory Businesses

1. A licensed cannabis testing facility shall comply with all State regulations.
2. Any cannabis testing facility shall maintain all certifications required by the State.
3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.
4. Inspections by the City Fire Chief or designee may be conducted anytime during the business's regular business hours.

K. Additional Requirements for Cannabis Distribution Businesses

1. A licensed cannabis distribution facility shall comply with all State regulations.
2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.
3. Inspections by the City Police Chief or designee may be conducted anytime during the business's regular business hours.
4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.
5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:
 - a. The manufacturer or cultivator's name and license number;
 - b. The date of entry into the distributor's storage area;
 - c. The unique identifiers and batch number associated with the batch;

d. A description of the cannabis goods with enough detail to easily identify the batch; and

e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,

a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and

b. All loading and unloading activities shall take place within the secured fenced area required above.

L. Commercial Cannabis Business Permit Selection Process

1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)

a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The City of Merced has established a merit based scoring system to objectively award permits as described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase I. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List- Dispensaries/Retail Sales' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales'. The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days,

after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for Dispensaries/Retail Sales' and entered into the Phase 2 review process. These requirements include but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period.
- iii. Application forms are filled out completely;
- iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 - Final Review and Scoring.

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
 - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
 - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
 - c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting

compliance with the following:

- a. The use is permitted in the Zoning District;
 - b. The location of the cannabis business meets the distance requirements from sensitive uses;
 - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
 - d. No zoning violations exist on the property;
 - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
 - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.
- iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit-based system and all merit-based considerations shall be included with the application forms. An average score for each applicant based upon the merit-based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of

ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List- Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit - Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits - Dispensaries/Retail Sales then available. Any element of an application that provided a successful applicant with points on the merit-based scoring system is subject to review and inspection by the City, which may include self-certification by the licensed business, on-site inspection, or other methods of enforcement.

a. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019 and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20, 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed one year from the date the last available Commercial Cannabis Business Permit- Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after one year

has elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit- Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business Permit- Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit- Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)

a. The Commercial Cannabis Business Permit-All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and

determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List- All Other Cannabis Businesses' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses'. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the 'Qualified Application List for All Other Cannabis Businesses'.

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services' decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase I - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for All Other Cannabis Businesses' and entered into the Phase 2 review process. These requirements include, but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period;
- iii. Application forms are filled out completely;

- iv. Business Owner(s)/ Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

f. Commercial Cannabis Business Permit- All Other Cannabis Businesses Selection - Phase 2 - Final Review

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
 - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
 - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
 - c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification

within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
 - a. The use is permitted in the Zoning District;
 - b. The use meets the distance requirements from sensitive uses;
 - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
 - d. No zoning violations exist on the property;
 - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
 - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

- iv. The Director of Development Services or designee, after reviewing the applications approved in Phase I and reviewing the foregoing information will make a recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 - Planning Commission

The Planning Commission will review the Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or

more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

- iv. A change in building elevations, floorplans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted, as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to

20.44.170(L)(4)(d).

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse, or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and

determine if a renewal CCBP should be granted.

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance;
- ii. Violates any other provision of this section or any City of Merced or State law, statute, rule, or regulation relating to the business's permitted activity;
- iii. Engages in or permits misconduct substantially related to the qualifications, functions, or duties of the permittee;
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;
- vi. Violates or fails to comply with the terms and conditions of the permit; or
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved

in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

b. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

- i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(v).
- ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.

- vi. The decision of the Planning Commission may be appealed to the City Council.
 - a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.
 - b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(vi)(e).
 - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
 - d. Any interested person may appear and be heard regarding the appeal.
 - e. A matter being heard on appeal may be continued for good cause.
 - f. The City Council's review shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

7. Modifications to Commercial Cannabis Business Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation in accordance with 20.44.170(O)(7), and must meet the requirements of Section 20.44.170(E)(1)(e). Any business that is awarded points on the merit-based selection criteria for local ownership shall not be approved for any request for minor modification that proposes to reduce local ownership below the minimum threshold for which points were awarded in the first place;
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of

associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance.
- ii. Violates any other provision of this section or any City of Merced or State law, statute, rule, or regulation relating to the business's permitted activity.
- iii. Engages in or permits misconduct substantially related to the qualifications, functions, or duties of the permittee.
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of

the operation of another business.

- vi. Violates or fails to comply with the terms and conditions of the permit.
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

c. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

- i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ninety (90) days of receiving the appeal unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(v).
- ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director's decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.

- vi. The decision of the Planning Commission may be appealed to the City Council.
 - a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.
 - b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(vi)(e).
 - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
 - d. Any interested person may appear and be heard regarding the appeal.
 - e. A matter being heard on appeal may be continued for good cause.
 - f. The City Council's review shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

M. Limitations on the City's Liability

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any

Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries, or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;
2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;
3. Name the city as an additionally insured on all City required insurance policies;
4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and
5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

N. Enforcement

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.
2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:
 - a. A discrepancy of more than \$1,000 in inventory over a period of 24 hours or \$3,000 over a period of 7 days.
 - b. A reason to suspect diversion, loss, theft or any

other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

O. Fees and Taxes

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. Initial Application Fees. The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).
2. Application Renewal Fees. The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.
3. Business License Fee. The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.
4. Commercial Cannabis Regulatory Fee. The Business Owner shall pay an annual regulatory fee ('Regulatory Fee') to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.
5. All required taxes including sales and use taxes, business, payroll etc.
6. Additional cannabis-specific gross receipts, excise, cultivation, or any other tax approved by the voters of the City of Merced.
7. Fees for background checks for businesses with more than one owner of 5% or more interest in a Commercial Cannabis Business. The application fees approved by City Council in Resolution 2021-43 account for a single owner's background check. Fees for additional owners shall be determined by the Chief of Police, approved by the Finance Officer, and updated each fiscal year. Requests for minor modifications to permits in accordance with 20.44.170(L)(7)(b)(iii) that propose changes to ownership and require background checks for new owners with 5% or more interest in a Commercial Cannabis Business will be subject to the same fees.

P. Labor Peace Agreements

1. All Commercial Cannabis Businesses with five (5) or more employees applying for a Commercial Cannabis Business Permit on or after November 3, 2021, shall provide the City with a notarized statement that the business will enter into, or demonstrate to the City that it has already entered into, and abide by the terms of a labor peace agreement. Such statement or demonstration shall be provided to the City as part of the application for a Commercial Cannabis Business Permit.
2. All Commercial Cannabis Business with five (5) or more employees that received a Commercial Cannabis Business Permit prior to November 3, 2021, are encouraged to provide to the City a statement or demonstration consistent with 20.44.170(P)(1) above.
3. All Commercial Cannabis Businesses with four (4) or fewer employees that apply for a Commercial Cannabis Business Permit on or after November 3, 2021, shall provide a notarized statement indicating that the applicant will enter into and abide by the terms of a labor peace agreement within 60 days of employing its 5th employee. Such statement shall be provided to the City as part of the application for a Commercial Cannabis Business Permit.
4. All Commercial Cannabis Businesses with four (4) or fewer employees that received a Commercial Cannabis Business Permit prior to November 3, 2021, are encouraged to provide to the City with a statement consistent with 20.44.170(P)(3) above.

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ___ day of _____, 2021, and was passed and adopted at a regular meeting of said City Council held on the ___ day of _____, 2021, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
STEPHANIE DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kimberly 9/1/21
City Attorney Date

RESOLUTION NO. 2021-____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
APPROVING UPDATED MERIT-BASED
SELECTION CRITERIA FOR SCORING
COMMERCIAL CANNABIS BUSINESS PERMIT
APPLICATIONS FOR WHICH THERE ARE A
LIMITED NUMBER OF PERMITS AVAILABLE**

WHEREAS, the City Council of the City of Merced held a noticed public hearing on November 20, 2017, on proposed Ordinance No. 2480, at which time all those interested in the matter were provided the opportunity to speak or providewritten or oral testimony regarding proposed Ordinance No. 2480, which amended the Zoning Ordinance (Title 20 of the Merced Municipal Code) to regulate all commercial cannabis activities and the cultivation of cannabis for personal use in the City of Merced;

WHEREAS, after hearing all the evidence and testimony, on November 20, 2017, the City Council introduced Ordinance No. 2480. Ordinance No. 2480 was subsequently adopted on December 4, 2017, and became effective 30 days later on January 3, 2018;

WHEREAS, Ordinance No. 2480 included Section 20.44.170(L)(1), which sets forth a selection process for Commercial Cannabis Business Permits for Dispensaries/Retail Sales for which there is a limited number (4) of permits available. This selection process is based on the recommendations of a Selection Panel composed of the City Manager, Chief of Police, and Director of Development Services, or their designees, using a merit-based scoring system to be established by the City to objectively award permits to be used in the event that there are more applications than there are permits available;

WHEREAS, on January 16, 2018, the City Council adopted Resolution 2018-1 of the City Council of the City of Merced, establishing a merit-based scoring system for cannabis retail sales dispensaries in accordance with Section 20.44.170(L)(1) of the Merced Municipal Code;

WHEREAS, at a regularly scheduled meeting on March 15, 2021, the City Council of the City of Merced directed that the merit-based selection criteria should be updated.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCED AS FOLLOWS:

SECTION 1. That certain document entitled “Merit Based Selection Criteria for Commercial Cannabis Business Permits (Limited Number of Permits Available)”, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The criteria herein shall become effective upon the date of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2021, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kimberly Maoy 9/1/21
City Attorney Date



**Merit Based Selection Criteria for Commercial Cannabis Business Permits
(Limited Number of Permits Available)**

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 1: Prioritize Medicinal Cannabis Access		
a) Proposal for combined medicinal/adult use dispensary		4
b) Proposal for medicinal only dispensary		3
c) Proposal for non-medicinal/adult use dispensary only		0
d) Proposal includes Delivery Services		2
Section 1: Sub-Total of Points Possible		6
Section 2: Geographical Preference/Neighborhood Relations		
a) Proposed location is within 1,200 feet of local public transportation		1
b) Proposal includes a process and schedule for at least two public outreach meetings per year that meet City approval		2
c) Business plan includes a schedule for communication and receiving feedback from all entities within 300 feet of the business at least two times a year		2
d) Proposal includes the appointment of an employee as a designated liaison with the neighborhood		1
e) Designated liaison employee is a City resident		1
f) Proposed location is more than 1,000 feet from an existing cannabis dispensary		1
Section 2: Sub-Total of Points Possible		8
Section 3: Facility Plan		
a) Business is formally associated with a non-retail cannabis or non-cannabis-related business in the City of Merced		2
b) Proposal includes daily inspection to ensure maintenance of the interior and exterior of the facility (i.e. free of trash, graffiti, etc.)		2
c) Location exceeds City parking requirements by 10% or more		1
e) Location exceeds minimum accessible parking requirements by 100% or more		1
f) Location is within an existing building or facility with an ability to be open for business within 6 months of approval of the CCBP by the City		1
Section 3: Sub-Total of Points Possible		7



Merit Based Selection Criteria for Commercial Cannabis Business Permits (Limited Number of Permits Available)

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 4: Standards and Procedures for the Safe Operation of Facilities:		
a) Proposal includes documented employee safety training program		1
b) Proposal includes documented employee cannabis educational training program		1
c) Business Plan includes enhanced security measures, including at least three of the following: panic buttons, dye packets, bulletproof window film (with break strength of 400 lbs. per inch or better), a UL-approved safe with a fire rating that is 2-hour 1700 degrees F or better with a complex locking device; motion sensing lighting; or other enhanced security measures acceptable to the City. (0 to 4 points to be awarded at the discretion of the City Selection Committee.)		0 to 3
d) Proposal includes climate-controlled environment		1
e) Proposal includes plan for disposal of all solid waste based on best practices of the State		1
f) Proposal includes a comprehensive documented process for 24-hour minimum response time to cannabis product recall notifications		2
g) Proposal includes more than one on-site security guard during business hours		2
h) Proposal includes a separate lobby area where identification is checked to ensure that only qualified individuals gain access to separate, locked areas where cannabis products are displayed		2
i) Proposal includes electronic storage of required records of sales, delivery manifests, patient information (if medicinal and required by State), inventory, etc., which can be provided to City personnel upon request		2
j) Proposal includes any proposed “green” business practices relating to energy and climate, water conservation, and materials/waste storage		1
k) Proposal includes secured loading/unloading area for deliveries		1
Section 4: Sub-Total of Points Possible		17



Merit Based Selection Criteria for Commercial Cannabis Business Permits (Limited Number of Permits Available)

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 5: Prior Experience in Business Ownership and Management		
a) Combined prior experience of proposed owners is between 6 months to 3 years of verified successful management of a legal retail cannabis facility		1
b) Combined prior experience of proposed owners is more than 3 years of verified successful management of a legal retail cannabis facility		1
c) Combined prior experience of proposed owners is more than 3 years of verified successful management of any non-cannabis legal retail facility		2
d) Combined prior experience of proposed owners is more than 1 year and up to 3 years with a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law and with proof of payment of taxes		1
e) Combined prior experience of proposed owners is more than 3 years and up with a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law and with proof of payment of taxes		2
f) Above prior experience was obtained within the City or County of Merced		3
g) Above prior experience was obtained within 100 miles of the City of Merced		1
Section 5: Sub-Total of Points Possible		11
Section 6: Qualifications of Principals/Business Plan		
a) At least one owner is a military veteran with an honorable discharge		2
b) At least one owner is a full-time resident of the County of Merced		2
c) At least one owner is a full-time resident of the City of Merced		3
d) More than 30% of the ownership is full-time residents of the City of Merced		2
e) More than 50% of the ownership is full-time residents of the City of Merced		2
f) Does the business qualify as a Disadvantaged Business Enterprise (DBE) as defined by the U.S. Department of Transportation?		2
g) Does the business have documented proof of access to at least \$150,000 in capital (or enough capital to pay all startup costs plus at least 3 months of operating costs)?		3
h) Does the business have documented proof of access to at least \$300,000 in capital (or enough capital to pay all startup costs plus at least 6 months of operating costs)?		3
i) Business Plans contain a valid pro forma for at least 3 years of operation		2
j) Business has documented agreements with cannabis distributors to supply products to their business		2
Section 6: Sub-Total of Points Possible		23



Merit Based Selection Criteria for Commercial Cannabis Business Permits (Limited Number of Permits Available)

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 7: Employee & Public Relations		
a) The business promotes local hiring or provides incentives for City/County of Merced residents to work with the business		3
b) The business provides employee health benefits for all employees		2
c) The business employs more than 5 people full-time, not counting the owners or security personnel		2
d) Proposal includes an ongoing public information program to inform City residents of cannabis issues and proper/safe/legal use of cannabis products		2
Section 7: Sub-Total of Points Possible		9
Section 8: Community Benefits		
a) Proposal includes benefits to the community, such as defined monetary contributions to local community organizations, or donating time to local community organizations, or any other proposed community benefit acceptable to the City. (0 to 5 points to be awarded at the discretion of the City Selection Committee.)		0 to 5
Section 8: Sub-Total of Points Possible		5
Section 9: Discretion of the City Selection Committee		
a) 0 to 15 additional points may be awarded to a proposal for outstanding features, measures, or programs (above and beyond the minimum requirements) proposed in the Commercial Cannabis Business Permit Application at the discretion of the City Selection Committee.		0 to 14
Section 9: Sub-Total of Points Possible		14
TOTAL POINTS POSSIBLE		100



Merit Based Selection Criteria for Commercial Cannabis Business Permits (Limited Number of Permits Available)

DISCLAIMER:

Although the City welcomes the applicant to suggest how many points they believe should be awarded in the "Points Awarded" column above, please note that the FINAL determination of how many points are awarded is at the sole discretion of the City's Selection Committee, made up of the City Manager, Police Chief, and the Director of Development Services or their designees. Final scores of the Committee members will be combined and divided by three for an average score. In the event of any tied scores, a random drawing will be used to break the tie.

PLEASE NOTE THAT FAILURE OF THE PROPOSED OWNERS (ANYONE WITH OWNERSHIP INTEREST) TO SUCCESSFULLY PASS THE DETAILED PHASE 2 BACKGROUND CHECK TO THE SATISFACTION OF THE POLICE CHIEF WILL RESULT IN AUTOMATIC DISQUALIFICATION OF THE APPLICATION FROM FURTHER CONSIDERATION.

APPLICANT CERTIFICATION (REQUIRED)

Under penalty of perjury, I hereby declare that I have read and understood the criteria above and I have provided information relative to how my cannabis business addresses that criteria in the application or attached to this document. I declare that this information is completely true and accurate. I understand that a misrepresentation of fact is cause for rejection of this application, denial of the license, or revocation of a license issued.

Signed _____ Date _____

CITY OF MERCED
Planning Commission

Resolution #4068

WHEREAS, the Merced City Planning Commission at its regular meeting of August 4, 2021, held a public hearing and considered **Zoning Ordinance Amendment #21-02**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.44.170 (Commercial Cannabis Businesses). This amendment would require that commercial cannabis businesses with five or more employees provide evidence of or commitment to a Labor Peace Agreement, would stipulate that future iterations of the Qualified Applicant List be maintained for one year, would allow for all cannabis business types allowed in the City to be permitted uses in the Business Park (B-P) Zone, would allow for cannabis retail sales dispensaries to be a permitted use in the Thoroughfare Commercial (C-T) Zone, would allow cannabis retail sales dispensaries to remain open until 10 PM, would stipulate that any element of a successful application for a Commercial Cannabis Business Permit that was awarded points from the merit-based selection criteria is subject to review, inspection, and enforcement by the City, and changes to the Merit-Based Selection Criteria for cannabis dispensaries; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through H of Staff Report #21-599 (Exhibit A); and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #21-21, approval of Zoning Ordinance Amendment #21-02, as outlined in Exhibit B and subject to the Findings set forth in Exhibit A attached hereto and incorporated herein by this reference, and approval of a Resolution updating the merit-based selection criteria for scoring commercial cannabis business permit applications for which there are a limited number of permits available.

Upon motion by Commissioner CAMPER, seconded by Commissioner DELGADILLO, and carried by the following vote:

AYES: Commissioners Camper, Delgadillo, White, and Chairperson Harris

NOES: None

ABSENT: Commissioner Dylina


ABSTAIN: None (two vacancies)

PLANNING COMMISSION RESOLUTION #4068

Page 2

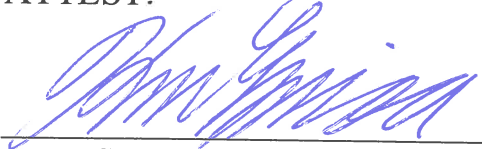
August 4, 2021

Adopted this 4th day of August, 2021



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A –Findings/Considerations

Exhibit B—Draft Ordinance

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Findings and Considerations
Planning Commission Resolution #4068
Zoning Ordinance Amendment #21-02

FINDINGS/CONSIDERATIONS:

General Plan Policies Related to This Application

- A) The proposed zoning ordinance amendment would make changes to Merced Municipal Code (MMC) Section 20.44.170 (Commercial Cannabis Businesses), per the directive of the City Council. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

Proposed Changes to Zoning Ordinance

- B) The proposed changes to the Zoning Ordinance are outlined in the Findings below. The changes are contained in the Draft Ordinance at Exhibit B of Planning Commission Resolution #4068 (Attachment A) and presented in redline form at Attachment B of Staff Report #21-599. In general, the changes can be summarized as follows:

- 1) Directives from the City Council to amend Section 20.44.170 of the Merced Municipal Code:
 - a. A commercial cannabis business shall provide evidence of or commitment to a Labor Peace Agreement if it employs five (5) or more employees.
 - b. Future iterations of the Qualified Applicant List shall be maintained for one year.
 - c. The Business Park (B-P) zone shall be an appropriate zone for cannabis cultivation, distribution, manufacturing, testing, and retail sales dispensaries.
 - d. The Thoroughfare Commercial (C-T) zone shall be an appropriate zone for cannabis retail sales dispensaries.
 - e. Cannabis retail sales dispensaries shall be permitted to be open until 10 PM.
 - f. Staff shall begin enforcement of elements of successful applications that were given points for community benefits.
- 2) Additional updates to MMC 20.44.170 added by staff:
 - a. In order to ensure that adequate costs for background checks are paid, staff has recommended updating 20.44.170(O) to include subsection 7 that indicates that the application fees for additional owners beyond

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4068

the first shall be required. It also notes that requests for minor modifications to permits in accordance with 20.44.170(L)(7)(b)(iii) that propose changes to ownership and require background checks for new owners with 5% or more interest in a Commercial Cannabis Business will be subject to fees.

- b. 20.44.170(L)(7)(b)(iii) has also received proposed updates, stating that a business that receives merit-based points for local ownership shall not be approved for any modification reducing its local ownership beneath the level for which it was awarded points.
 - c. Recommended removal of regulations, now outdated, regarding what to do with the Qualified Applicant List that was established on September 20, 2018.
- 3) A Resolution, based on City Council direction, enacting modifications to the merit-based selection criteria for cannabis retail sales dispensaries, originally adopted as Resolution 2018-1 of the City Council:
- a. Adding one (1) point to applications more than three blocks from an existing cannabis retail sales dispensary.
 - b. Adding two (2) points to applications with greater than 30% local ownership.
 - c. Adding two (2) points to applications with greater than 50% local ownership (cumulative with *b.* above).
 - d. Reduction of five (5) points from the discretion of the City Selection Committee (Section 9) to maintain the total points at 100.
- 4) Additional updates to the merit-based selection criteria for cannabis retail sales dispensaries, as proposed by staff:
- a. Recommended removal of criteria from the merit-based scoring criteria that were unhelpful in delineating between candidates in the original application cycle.
 - b. Proposed reallocation of points for removed criteria into criteria regarding Disadvantaged Businesses, veteran status, and neighborhood liaisons.

Proposed Changes to the Code Directed by City Council

- C) To comply with the City Council’s directives, the following changes are being made to Section 20.44.170:

- 1) Section 20.44.170(A) “Zoning Compliance and Commercial Cannabis Business Permit Requirements” would be changed to read as follows: *“Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, C-T, B-P, I-L, and I-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones.”* The remainder of the text in this section is unchanged.
- 2) Table 20.44-1 would be updated to include columns for the C-T and B-P zones, indicating permitted for dispensaries in the C-T zone, and indicating permitted for all cannabis business types in the B-P zone.
- 3) A definition for ‘Labor Peace Agreement’ has been added as 20.44.170(C)(24), which has renumbered all subsequent definitions. Subsection 24 reads as follows: **“Labor Peace Agreement”** means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant’s employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant’s employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.”
- 4) Section 20.44.170(F)(14) would be changed to indicate that 10 PM is now the latest allowable time a cannabis retail sales dispensary may be open (changed from 9PM previously).
- 5) To fulfill the City Council’s direction that staff begin to enforce elements of successful applications that were given points for community benefits, language in 20.44.170(L)(1)(g)(iv) would be added: “Any element of an application that provided a successful applicant with points on the merit-based scoring system is subject to review and inspection by the City, which may include required self-certification by the licensed business, on-site inspection, or other methods of enforcement.”
- 6) Section 20.44.170(L)(1)(g)(iv)(c) would be modified to change the length of validity of the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to one year.
- 7) Section 20.44.170(P), “Labor Peace Agreements” would be added, reading: “1. All Commercial Cannabis Businesses with five (5) or more employees

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4068

applying for a Commercial Cannabis Business Permit on or after November 3, 2021, shall provide the City with a notarized statement that the business will enter into, or demonstrate to the City that it has already entered into, and abide by the terms of a labor peace agreement. Such statement or demonstration shall be provided to the City as part of the application for a Commercial Cannabis Business Permit.”

“2. All Commercial Cannabis Business with five (5) or more employees that received a Commercial Cannabis Business Permit prior to November 3, 2021, are encouraged to provide to the City a statement or demonstration consistent with 20.44.170(P)(1) above.”

“3. All Commercial Cannabis Businesses with four (4) or fewer employees that apply for a Commercial Cannabis Business Permit on or after November 3, 2021, shall provide a notarized statement indicating that the applicant will enter into and abide by the terms of a labor peace agreement within 60 days of employing its 5th employee. Such statement shall be provided to the City as part of the application for a Commercial Cannabis Business Permit.”

“4. All Commercial Cannabis Businesses with four (4) or fewer employees that received a Commercial Cannabis Business Permit prior to November 3, 2021, are encouraged to provide to the City with a statement consistent with 20.44.170(P)(3) above.”

Proposed Changes to the Code from City Staff

- D) Staff has proposed additional updates to help clarify and improve Section 20.44.170 in addition to the City Council’s directed changes:
- 1) Section 20.44.170(C)(13) would be updated with all references to ‘marijuana’ changed to ‘cannabis’ in order to be more internally consistent, better comport with State regulatory language, and observe best practices.
 - 2) Section 20.44.170(L)(1)(g)(iv) subsections a. and c. would be updated to remove outdated references to a List that was adopted on September 20, 2018.
 - 3) Section 20.44.170(L)(7)(b)(iii) would be updated to reference a new subsection, 20.44.170(O)(7) (see item 4 below), and add language stating: “Any business that is awarded points on the merit-based selection criteria for local ownership shall not be approved for any request for minor modification that proposes to reduce local ownership below the minimum threshold for which points were awarded in the first place.”
 - 4) Section 20.44.170(O)(7) would be added, reading: “Fees for background checks for businesses with more than one owner of 5% or more interest in a Commercial Cannabis Business. The application fees approved by City Council in Resolution 2021-43 account for a single owner’s background

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4068

check. Fees for additional owners shall be determined by the Chief of Police, approved by the Finance Officer, and updated each fiscal year. Requests for minor modifications to permits in accordance with 20.44.170(L)(7)(b)(iii) that propose changes to ownership and require background checks for new owners with 5% or more interest in a Commercial Cannabis Business will be subject to the same fees.”

Proposed Changes to Merit-Based Criteria Directed by City Council

- E) The following changes are proposed to the merit-based selection criteria for cannabis retail sales dispensaries, as directed by City Council:
- 1) Adding a criterion worth one (1) point as follows: “Proposed location is more than 1,000 feet from an existing cannabis dispensary.”
 - 2) Adding a criterion worth two (2) points as follows: “More than 30% of the ownership is full-time residents of the City of Merced.”
 - 3) Adding a criterion worth two (2) points as follows: “More than 50% of the ownership is full-time residents of the City of Merced.” The points from this criterion can be earned cumulatively with item 2 above.
 - 4) Reduction of five (5) points from the discretion of the City Selection Committee (Section 9) to maintain the total points at 100.

Changes to Merit-Based Criteria Proposed by City Staff

- F) The following changes are proposed to the merit-based selection criteria for cannabis retail sales dispensaries, based upon staff’s observations from the previous application cycle:
- 1) Removal of the following criteria, due to lack of value in differentiating between applicants during the initial application period:
 - a. “Business is open more than five days a week at least 6 hours per day.”
 - b. “Proposal includes plans and procedures for how all cannabis products on the premises or held by the applicant have met the testing requirements as defined by the State.”
 - c. “Proposal includes participation in web-based public safety application or equivalent that provides law enforcement with confirmation of local and state licenses.”
 - 2) Reallocation of points from the above criteria into the following criteria,

addition of one point each:

- a. “At least one owner is a military veteran with an honorable discharge.”
- b. “Does the business qualify as a Disadvantaged Business Enterprise (DBE) as defined by the U.S. Department of Transportation?”
- c. “The business promotes local hiring or provides incentives for City/County of Merced residents to work with the business.”

Time Frames

- G) If recommended for approval by the Planning Commission on August 4, 2021, the Ordinance revisions would be scheduled for a City Council public hearing on September 20, 2021. A 2nd reading and adoption would follow on October 4, 2021, with the Ordinance being effective 30 days later, or on or about November 3, 2021.

Environmental Clearance

- H) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a *Categorical Exemption* is being recommended (see Attachment D of Staff Report #21-599).

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MERCED, CALIFORNIA, AMENDING
SECTION 20.44.170, "REGULATION OF
COMMERCIAL CANNABIS ACTIVITIES -
COMMERCIAL CANNABIS BUSINESS PERMIT
REQUIRED," OF THE MERCED MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS
FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Section 20.44.170,
"Regulation of Commercial Cannabis Activities - Commercial Cannabis Permit Required,"
of the Merced Municipal Code is hereby amended to read as follows:

**"20.44.170 -REGULATION OF COMMERCIAL
CANNABIS ACTIVITIES - COMMERCIAL
CANNABIS BUSINESS PERMIT REQUIRED**

**A. Zoning Compliance and Commercial Cannabis
Business Permit Requirements**

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, C-T, B-P, I-L, and I-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted - 'X', or permitted - 'P'. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section, then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1									Additional Specific Use Standards
	Land Use Classification [4] [5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	C-T Zone	B-P Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	X	P	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	X	P	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	X	P	P	P	Sec. 20.44.170(h)
Dispensary [1] [2]	Pharmaceutical, medical	P	P	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1] [2]	Retail, non-medical/combined	P	P	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	X	P	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	X	P	P	P	Sec. 20.44.170(k)

Footnotes

1. Only five (5) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced at any one time.
2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.
3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).
4. If listed as 'Permitted' in a specific zone above, then that use is also 'Permitted' in Planned Development (P-D) zones that have the equivalent General Plan land use designation as that zone.
5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f).

Land Use Classifications:

Greenhouse, Commercial A - Permitted cultivation area:0 to 5,000 square feet

Greenhouse, Commercial B - Permitted cultivation area:5,000 to 10,000 square feet

Greenhouse, Commercial C - Permitted cultivation area:10,000 to 22,000 square feet

Greenhouse, Commercial D - Permitted cultivation area: 22,000 square feet

B. Cultivation of Cannabis for Personal Use in Residential Zones

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(8)(I)(i) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owners right to deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or

cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

- ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

C. Definitions

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **'Applicant'** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **'Cannabis'** means all parts of the 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 marijuana. 'Cannabis' also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, 'cannabis' does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **'Cannabis waste'** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **'Canopy'** means all of the following:

- a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **'City'** means the City of Merced.

6. **'Commercial cannabis business permit (CCBP)'** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **'Commercial cannabis activity'** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **'Commercial vehicle'** means a vehicle as defined in Vehicle Code section 260.

9. **'Concentrated cannabis product'** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **'Cultivation'** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **'Customer'** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **'Day Care Center'** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **'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, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
14. **'Delivery employee'** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.
15. **'Dispensary'** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.
16. **'Display'** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.
17. **'Display case'** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.
18. **'Distribution'** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.
19. **'Edible cannabis product'** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.
20. **'Fully Enclosed and Secure Structure'** means a fully-enclosed space within a building that complies with the California Building Code ('CBSC'), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or

more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two-inch by four-inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **'Free sample'** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **'Greenhouse'** means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a 'Fully Enclosed and Secure Structure' as defined above in 20.44.170(C), Subsection 20.

23. **'Indoors'** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 20.

24. **'Labor Peace Agreement'** means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the City's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

25. **'License'** means a state license issued under this division, and includes both an A-license and an M- license, as well as a testing laboratory license.

26. **'Limited-access area'** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.
27. **'Medical' or 'Medicinal'** have the same meaning under the terms of this ordinance.
28. **'Medical cannabis goods'** means cannabis, including dried flower, and manufactured cannabis products.
29. **'Medical cannabis patient'** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.
30. **'Manufacturer'** means a licensee 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.
31. **'Manufacturing' or 'manufacturing operation'** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.
32. **'Nonvolatile solvent'** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.
33. **'Operating hours'** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.
34. **'Owner' or 'Ownership interest'** means an interest

held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an 'owner' of the commercial cannabis business.

35. **'Package'** and **'Packaging'** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. 'Package' and 'packaging' does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

36. **'Patient or qualified patient'** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

37. **'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.

38. **'Pest'** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

39. **'Physician's recommendation'** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

40. **'Premises'** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

41. **'Pre-roll'** means dried cannabis flower rolled in paper prior to retail sale.

42. **'Primary Caregiver'** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

43. **'Private security officer'** has the same meaning as that

term as defined in the State of California Business and Professions Code section 7574.01.

44. **'Publicly owned land'** means any building or real property that is owned by a city, county, state, federal, or other government entity.

45. **'Purchase'** means obtaining cannabis goods in exchange for consideration.

46. **'Purchaser'** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

47. **'Quarantine'** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

48. **'Retail area'** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

49. **'School'** means those sites upon which full-time instruction in any of grades K through 12 is provided where the primary purpose is education, as determined in the sole discretion of the City Council, and which are identified as a school on the City's official List of Schools' as provided in Section 20.44.170(E)(3)(f)(i). 'School ' does not include any private site upon which education is primarily conducted in private homes.

50. **'Security monitoring'** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

51. **'Selection Panel'** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

52. **'Sell,' 'sale,' and 'to sell'** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of

cannabis goods 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 goods by a licensee to the licensee from whom such cannabis goods were purchased.

53. **'Sublet'** means to lease or rent all or part of a leased or rented property.

54. **'State'** means the State of California.

55. **'Testing Laboratory'** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

56. **'Vehicle alarm system'** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

57. **'Volatile solvent'** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

58. **'Wholesale'** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

59. **'Youth Center'** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

D. Compliance with State and Local Licensing Requirements

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

E. General Provisions for Commercial Cannabis Activities in the City of Merced

1. Commercial Cannabis Business Permit Required

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

- i. Cultivation
- ii. Distribution
- iii. Manufacturing
- iv. Retail sales (Dispensary)
- v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

- i. A felony offense listed in California Health and Safety Code Section 11590.
- ii. A felony offense listed in California Penal Code Section 667.S(c).
- iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.
- iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.
- v. A felony conviction involving fraud, deceit, or embezzlement.

- vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

- f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

- g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7), and does not run with the land or with the business.

- 1. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

- a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

- b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

- c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

- d. Training records, including but not limited to the content of the training provided and the names of the employees

that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

J. Proof of insurance.

2. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20)

feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permits submitted to the City. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted to the City. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

(i) The City shall establish an official "List of Schools" which are located within the City of Merced by resolution of the City Council after a public hearing. Said list shall be updated on an annual basis on or before January 31st of each year, and/or whenever a commercial cannabis business permit for a dispensary becomes available.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

J. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed 'abandoned' and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State

and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an 'A' rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's 'doing business as' name and license number, the employee's first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm

company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. Said notification shall be addressed to the Director of Development Services or designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

- i. Emergency action response planning as necessary
- ii. Employee accident reporting and investigation policies
- iii. Fire prevention
- iv. Hazard communication policies, including maintenance of material safety data sheets
- v. Materials storage and handling policies
- vi. Personal protective equipment policies
- vii. Operation manager contacts
- viii. Emergency responder contacts
- ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

F. Additional Regulations for Dispensary and Retail Sales of Cannabis

1. Only five (5) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced.
2. No retail cannabis facility may engage in check cashing activities at any time.
3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.
4. Restrooms shall remain locked during business hours and not open to the public.
5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.
6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.
7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.
8. Security guards are permitted, but not mandated, to carry firearms.
9. All cannabis products available for sale shall be securely locked and stored
10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to

ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.

11. Medical Cannabis Dispensaries shall maintain the full name, address, and telephone number(s) of all patient members to whom the business provides medical cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 10 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: 'Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited.'

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis. A medicinal licensee may sell cannabis products to and allow on the premises, any person 18

years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol, or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive-through facility.

G. Additional Regulations for Commercial Cannabis Delivery Services

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.
2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.
3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of \$1,000,000 for any and all vehicles being used to transport cannabis goods.
4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.
5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.
6. The following applies to all deliveries of cannabis products:
 - a. May only be made to a physical address in California; and
 - b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.
7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.
8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.
9. A manifest with all information required in this

section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed \$3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

- a. Name and address of the licensed dispensary;
- b. The name of the employee who delivered the order;
- c. The date and time the delivery request was made;
- d. The complete delivery address;
- e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;
- f. The total amount paid for the delivery including any fees or taxes; and
- g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

H. Additional Requirements for Manufactured

Cannabis Businesses

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.
2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.
3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.
4. Inspections by the City Fire Chief or designee may be conducted anytime during the business' regular business hours.
5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor manufacturing of cannabis is expressly prohibited.

I. Additional Requirements for Cannabis Cultivation Businesses

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.
2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.
5. All outdoor lighting used for security purposes shall be shielded and downward facing.
6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.
7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

J. Additional Requirements for Cannabis Testing Laboratory Businesses

1. A licensed cannabis testing facility shall comply with

all State regulations.

2. Any cannabis testing facility shall maintain all certifications required by the State.
3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.
4. Inspections by the City Fire Chief or designee maybe conducted anytime during the business's regular business hours.

K. Additional Requirements for Cannabis Distribution Businesses

1. A licensed cannabis distribution facility shall comply with all State regulations.
2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.
3. Inspections by the City Police Chief or designee may be conducted anytime during the business's regular business hours.
4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.
5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:
 - a. The manufacturer or cultivator's name and license number;
 - b. The date of entry into the distributor's storage area;
 - c. The unique identifiers and batch number associated with the batch;
 - d. A description of the cannabis goods with enough detail to easily identify the batch; and

- e. The weight of or quantity of units in the batch.
-
- 6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.
 - 7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.
 - 8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.
 - 9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.
 - 10. If located in a General Commercial (C-G) zone,
 - a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and
 - b. All loading and unloading activities shall take place within the secured fenced area required above.

L. Commercial Cannabis Business Permit Selection Process

1. Selection Process for Dispensaries/Retail Sales
(Limited Number of Permits Available)

- a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.
- b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.
- c. The City of Merced has established a merit based scoring system to objectively award permits as described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.
- d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase I. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List- Dispensaries/Retail Sales' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales'. The qualified applicants will be entered into the Phase 2 review process.
- e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be

extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for Dispensaries/Retail Sales' and entered into the Phase 2 review process. These requirements include but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period.
- iii. Application forms are filled out completely;
- iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 - Final Review and Scoring.

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
 - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
 - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
 - c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
 - a. The use is permitted in the Zoning

District;

- b. The location of the cannabis business meets the distance requirements from sensitive uses;
 - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
 - d. No zoning violations exist on the property;
 - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
 - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.
- iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit-based system and all merit-based considerations shall be included with the application forms. An average score for each applicant based upon the merit-based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of

ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List- Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit - Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits - Dispensaries/Retail Sales then available. Any element of an application that provided a successful applicant with points on the merit-based scoring system is subject to review and inspection by the City, which may include required self-certification by the licensed business, on-site inspection, or other methods of enforcement.

a. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019 and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20, 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed one year from the date the last available Commercial Cannabis Business Permit- Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after one year has elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit- Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business Permit- Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit-Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit-Dispensaries/Retail Sales shall be issued otherwise.

2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)

a. The Commercial Cannabis Business Permit-All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the

'Qualified Commercial Cannabis Business Application List- All Other Cannabis Businesses' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses'. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the 'Qualified Application List for All Other Cannabis Businesses'.

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services' decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase I - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for All Other Cannabis Businesses' and entered into the Phase 2 review process. These requirements include, but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period;
- iii. Application forms are filled out completely;
- iv. Business Owner(s)/ Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;

- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

f. Commercial Cannabis Business Permit- All Other Cannabis Businesses Selection - Phase 2 - Final Review

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
 - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
 - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
 - c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to

appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
 - a. The use is permitted in the Zoning District;
 - b. The use meets the distance requirements from sensitive uses;
 - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
 - d. No zoning violations exist on the property;
 - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
 - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.
- iv. The Director of Development Services or designee, after reviewing the applications approved in Phase I and reviewing the foregoing information will make a

recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 - Planning Commission

The Planning Commission will review the Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section

20.44.170(E)(1)(e);

- iv. A change in building elevations, floorplans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted, as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(4)(d).

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior

to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse, or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

c. The Director of Development Services or designee may deny the annual renewal of a Commercial

Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance;
- ii. Violates any other provision of this section or any City of Merced or State law, statute, rule, or regulation relating to the business's permitted activity;
- iii. Engages in or permits misconduct substantially related to the qualifications, functions, or duties of the permittee;
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;
- vi. Violates or fails to comply with the terms and conditions of the permit; or
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines

that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

b. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

- i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(v).
- ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.
- vi. The decision of the Planning Commission may be appealed to the City Council.

- a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.
- b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(vi)(e).
- c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- d. Any interested person may appear and be heard regarding the appeal.
- e. A matter being heard on appeal may be continued for good cause.
- f. The City Council's review shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

7. Modifications to Commercial Cannabis Business Permit (All Types)

- a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation in accordance with 20.44.170(O)(7), and must meet the requirements of Section 20.44.170(E)(1)(e). Any business that is awarded points on the merit-based selection criteria for local ownership shall not be approved for any request for minor modification that proposes to reduce local ownership below the minimum threshold for which points were awarded in the first place;
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will

provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance.
- ii. Violates any other provision of this section or any City of Merced or State law, statute, rule, or regulation relating to the business's permitted activity.
- iii. Engages in or permits misconduct substantially related to the qualifications, functions, or duties of the permittee.
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
- vi. Violates or fails to comply with the terms and conditions of the permit.

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

c. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

- i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ninety (90) days of receiving the appeal unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(v).
- ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director's decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.
- vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding

official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(vi)(e).

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

M. Limitations on the City's Liability

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries, or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;
2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;
3. Name the city as an additionally insured on all City required insurance policies;
4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and
5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

N. Enforcement

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.
2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:
 - a. A discrepancy of more than \$1,000 in inventory over a period of 24 hours or \$3,000 over a period of 7 days.
 - b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.
 - c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients,

caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

O. Fees and Taxes

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. Initial Application Fees. The Business Applicant shall

submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).

2. Application Renewal Fees. The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.

3. Business License Fee. The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.

4. Commercial Cannabis Regulatory Fee. The Business Owner shall pay an annual regulatory fee ('Regulatory Fee') to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

5. All required taxes including sales and use taxes, business, payroll etc.

6. Additional cannabis-specific gross receipts, excise, cultivation, or any other tax approved by the voters of the City of Merced.

7. Fees for background checks for businesses with more than one owner of 5% or more interest in a Commercial Cannabis Business. The application fees approved by City Council in Resolution 2021-43 account for a single owner's background check. Fees for additional owners shall be determined by the Chief of Police, approved by the Finance Officer, and updated each fiscal year. Requests for minor modifications to permits in accordance with 20.44.170(L)(7)(b)(iii) that propose changes to ownership and require background checks for new owners with 5% or more interest in a Commercial Cannabis Business will be subject to the same fees.

P. Labor Peace Agreements

1. All Commercial Cannabis Businesses with five (5) or

more employees applying for a Commercial Cannabis Business Permit on or after November 3, 2021, shall provide the City with a notarized statement that the business will enter into, or demonstrate to the City that it has already entered into, and abide by the terms of a labor peace agreement. Such statement or demonstration shall be provided to the City as part of the application for a Commercial Cannabis Business Permit.

2. All Commercial Cannabis Business with five (5) or more employees that received a Commercial Cannabis Business Permit prior to November 3, 2021, are encouraged to provide to the City a statement or demonstration consistent with 20.44.170(P)(1) above.
3. All Commercial Cannabis Businesses with four (4) or fewer employees that apply for a Commercial Cannabis Business Permit on or after November 3, 2021, shall provide a notarized statement indicating that the applicant will enter into and abide by the terms of a labor peace agreement within 60 days of employing its 5th employee. Such statement shall be provided to the City as part of the application for a Commercial Cannabis Business Permit.
4. All Commercial Cannabis Businesses with four (4) or fewer employees that received a Commercial Cannabis Business Permit prior to November 3, 2021, are encouraged to provide to the City with a statement consistent with 20.44.170(P)(3) above.

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ___ day of _____, 2021, and was passed and adopted at a regular meeting of said City Council held on the ___ day of _____, 2021, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

Mayor

ATTEST:
STEPHANIE DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney **Date**

ZONING ORDINANCE AMENDMENT

#21-02- COMMERCIAL CANNABIS BUSINESS REQUIREMENTS

City Council Public Hearing,
September 20, 2021

OVERVIEW

- On March 15, 2021, the City Council directed staff to make updates to the regulations regarding cannabis businesses and MMC 20.44.170 in preparation for a new application cycle for dispensary businesses.
- On August 4, 2021, at a public hearing, the Planning Commission recommended for approval to the City Council these changes and some additional updates staff proposed.





BREAKDOWN

- Directives from the City Council that amend 20.44.170
- Additional updates to 20.44.170 recommended by staff
- Directives from the City Council in the form of a Resolution modifying the merit-based selection criteria for retail cannabis dispensaries
- Additional modifications to the merit-based selection criteria for retail cannabis dispensaries recommended by staff
- Amendments recommended by Planning Commission
- Issues raised since the Planning Commission meeting

COUNCIL-DIRECTED AMENDMENTS

A. LABOR PEACE AGREEMENT:

Mandatory if 5+ employees.

B. QUALIFIED LIST:

1 year retention.

C. BUSINESS PARK:

Suitable for all cannabis business types.

D. THOROUGHFARE COMMERCIAL:

Suitable for retail dispensaries.

E. DISPENSARY HOURS:

Until 10pm.

F. STAFF:

To begin enforcement of points given during merit process.





STAFF-RECOMMENDED AMENDMENTS

A. BACKGROUND CHECK FEES:

Scale to number of owners, payment stipulated for ownership modifications.

B. LOCAL OWNERSHIP PRESERVATION:

If an application receives points for local ownership, the City will reject modifications that would reduce local ownership below the level it received points for. Would not apply retroactively to existing permittees.

C. CLEAN-UP:

Outdated regulations stating what to do regarding the Qualified Applicant List that was established on September 20, 2018, have been removed.

COUNCIL-DIRECTED CRITERIA UPDATES

A. ONE ADDITIONAL POINT:

Applications 3+ blocks from an existing retail dispensary.

B. TWO ADDITIONAL POINTS:

Applications with >30% local ownership.

C. TWO ADDITIONAL POINTS:

Applications with >50% local ownership (cumulative with *B*).

D. FIVE REDUCED POINTS:

Discretionary point pool has been reduced to maintain the total point value at 100.





STAFF-RECOMMENDED CRITERIA UPDATES

A. REMOVAL OF CRITERIA:

1. Business open >5 hours per day.
2. Proposal shows how all products meet State testing requirements.
3. Proposal participates in web-based public safety application.

B. REALLOCATION OF POINTS (+1 EA.):

1. At least one owner is a military veteran.
2. Is a Disadvantaged Business Enterprise per USDOT.
3. Promotes/incentivizes local hiring.

PLANNING COMMISSION AMENDMENTS

A. ONE FEWER POSSIBLE POINT:

Item 4c: Security Measures now 0-3 points.

B. ONE FEWER POSSIBLE POINT:

Item 9a: Discretionary points from Selection Committee now 0-14 points.

C. ONE ADDITIONAL POINT:

Item 6b: Ownership residence in County of Merced now worth 2 points.

D. ONE ADDITIONAL POINT:

Item 6c: Ownership residence in City of Merced now worth 3 points.





ISSUES RAISED POST-PLANNING COMMISSION

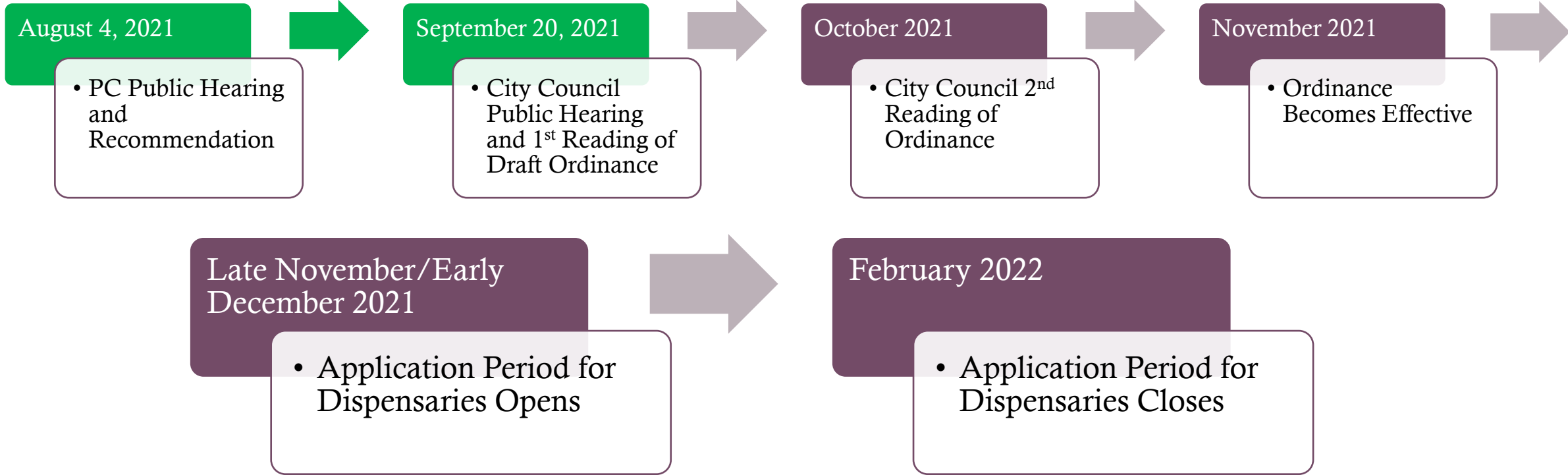
A. FINDINGS OF FACT CORRECTION:

An error in the definition of “Labor Peace Agreement” in the Findings of Fact (Exhibit A of Planning Commission Resolution #4068) that incorrectly referred to the State has been corrected to refer to the City.

B. CLARIFYING UPDATE OF SCHOOLS:

Staff is also proposing an amendment to Section 20.44.170(E)(3)(f)(i) that clarifies the process updating the City’s List of Schools. The language is updated to clarify that staff will review the list annually or when a dispensary permit is available, and if amendments are needed, they are considered by the City Council at a public hearing.

TENTATIVE TIMELINE





QUESTIONS?