

**CITY OF MERCED**  
**Planning & Permitting Division**

**STAFF REPORT:** #19-01

**AGENDA ITEM:** 4.2

**FROM:** Kim Espinosa,  
Planning Manager

**PLANNING COMMISSION**  
**MEETING DATE: Jan. 9, 2019**

**PREPARED BY:** Michael Hren,  
Principal Planner

---

**SUBJECT:** **Appeal of Zoning Determination #18-01** by WB Pharms. Appellant is appealing the determination of the Director of Development Services regarding the prohibition in the General Commercial zone of all cannabis cultivation facilities, including indoor cultivation utilizing exclusively artificial lighting. \*PUBLIC HEARING\*

**ACTION:** Affirm, Reverse, or Modify the Zoning Determination issued by the Director of Development Services on October 10, 2018

**SUMMARY**

The Director of Development Services issued a determination in response to Appellant's request (Attachment D), determining that all commercial cannabis cultivation facilities are prohibited in the General Commercial (C-G) zone of the City of Merced. WB Pharms has appealed this decision to the Planning Commission (Attachment B).

**RECOMMENDATION**

Planning staff recommends that the Planning Commission affirm the determination issued by the Director of Development Services on October 10, 2018 (Attachment C) including the adoption of the Resolution at Attachment F.

**PROJECT DESCRIPTION**

The appellant proposes that a commercial cannabis cultivation facility be permitted at 1600 W. Main Street in the City of Merced. The appeal does not seek an exemption from the regulations of the zoning ordinance for specific conditions on that property. The appeal, "...requests that the City of Merced make a determination that operating an indoor cultivation operation at the proposed location is consistent with the City's expectation and enforcement of its Ordinance and some of the latitude it gives Council and staff." The decision of the Planning Commission as to the appropriateness of this use will be applied to all C-G zoned properties in the City of Merced and may have implications regarding the appropriateness of indoor cultivation in other zones.

## **BACKGROUND**

Because of a recent lot split that adjusted the parcel lines of Stephan Grey Park (Assessor's Parcel Number 058-150-053), the property at 1600 W. Main Street is outside the 600-foot buffer for sensitive uses.

## **FINDINGS/CONSIDERATIONS:**

### **Zoning Compliance and Policies Related to This Application**

- A) The proposed project, per the determination of the Director of Development Services, does not comply with the General Plan designation of General Commercial and the zoning designation of General Commercial.

### **Zoning Determination**

- B) In addition to the rationale presented in the Zoning Determination issued on October 10, 2018 (Attachment C), staff has provided a relevant slide (Attachment E) from the presentation given during the approval process of Ordinance #2480. This slide, which was repeated during several presentations, states that the C-G zone would allow cannabis dispensaries, cannabis testing labs, and cannabis distribution businesses that met specific criteria and that, "no other Commercial Cannabis Businesses would be Allowed." This shows that a clear understanding was established that no commercial cannabis cultivation businesses were to be permitted in the C-G zone. Based on the information provided in the Zoning Determination and the above, staff believes that the appellant's request is not in line with the direction provided by the Planning Commission nor that of the City Council during the approval process of Ordinance #2480.

### **Environmental Clearance**

- C) CEQA does not apply to ministerial (non-discretionary) projects. This appeal is not considered a "project" requiring CEQA review.

### **Attachments:**

- A) Ordinance #2480
- B) Appeal of Zoning Determination
- C) Zoning Determination issued October 10, 2018
- D) Request for Interpretation of Ordinance 20.44.170(A)
- E) Slide 16 from November 20, 2017, Planning Commission Public Hearing
- F) Draft Planning Commission Resolution

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, REPLACING 20.44.170 (“MEDICAL MARIJUANA AND CULTIVATION”); AMENDING SECTION 20.10.020 AND TABLE 20.10-1 (“COMMERCIAL ZONING DISTRICTS”), AND AMENDING SECTION 20.12.020 AND TABLE 20.12-1 (“INDUSTRIAL ZONING DISTRICTS”) OF THE MERCED MUNICIPAL CODE; AND ADDING LAND USE TABLE 20.44-1 TO REGULATE ALL COMMERCIAL CANNABIS ACTIVITIES AND CULTIVATION FOR PERSONAL USE IN THE CITY OF MERCED**

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

**SECTION 1: Findings.** The City Council finds and declares as follows:

- A. In 1996, the California electorate approved Proposition 215, the Compassionate Use Act which allows a patient, with a doctor’s recommendation, to use cannabis for medical purposes without the fear of prosecution or arrest; and
- B. In 2003, the California legislature passed Senate Bill 420 (Medical Marijuana Program Act) which amended the Health and Safety Code to permit the establishment of medical cannabis dispensaries for the distribution of cannabis for medical purposes; and
- C. In 2005, the California Board of Equalization began issuing seller’s permits for sales consisting of medical cannabis; and
- D. In 2008, the California Attorney General issued guidelines for the security and non-diversion of cannabis grown for medical use; and
- E. In 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”) further amended in 2016 as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established regulations and a state licensing system for medical cannabis cultivation, manufacturing, delivery, and dispensing; and
- F. In 2016, the voters of the State of California approved and passed Proposition 64 also known as the Adult Use of Marijuana Act (“AUMA”); and
- G. In 2017, the Governor signed into law Senate Bill 94 also known as Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and
- H. Health & Safety Code Section 11362.83 provides that cities are free to adopt and enforce local ordinances that regulate the location, operation, or establishment of medical cannabis; and
- I. After studying various alternatives for the regulation of commercial cannabis considering input from stakeholders and a public hearing, and reviewing the legal status of cannabis under applicable law, the City Council finds that the regulation of commercial cannabis activities is necessary to protect the public health, safety, and welfare by mitigating the adverse secondary effects from the operations of these uses; and

**ATTACHMENT A**

- J. The City of Merced has a compelling interest in ensuring that cannabis is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which these uses may operate, and in providing access of cannabis to residents; and
- K. The proposed Ordinance has been reviewed by City staff in accordance with the Environmental Checklist Form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would create any significant environmental impacts, and City staff has determined that the establishment of regulations for commercial cannabis businesses do not meet any of the thresholds contained in the Checklist that would trigger a significant environmental impact, and thus according to the “general rule exemption” (Section 15061(b)(3) of the CEQA Guidelines, projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required.

**SECTION 2: Authority**

This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including by not limited to, Article IX, Section 7 of the California Constitution, the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program (California Health and Safety Code Section 11362.7 et seq.), the Medical Marijuana Regulation and Safety Act (AB 266, AB 243, and SB 643; hereafter “MMRSA”), the Adult Use of Marijuana Act (Proposition 64), and the Medical and Adult Use Cannabis Regulation and Safety Act (SB 94; hereafter “MAUCRSA”).

**SECTION 3: Purpose and Intent**

The purpose and intent of this section is to regulate commercial cannabis business activities in order to ensure the health, safety and welfare of the residents of the City of Merced by establishing regulations necessary for a commercial cannabis business to obtain and maintain a Commercial Cannabis Business Permit (CCBP). Any commercial cannabis businesses operating in the City of Merced shall at all times be in compliance with current State Law and this ordinance. All commercial cannabis facilities shall operate in accordance with the regulations in this ordinance and with the conditions of approval associated with the applicable zone for the parcel of real property upon which the commercial cannabis activities are conducted. Any commercial cannabis business shall qualify for and receive a Commercial Cannabis Business Permit from the City of Merced as provided by this ordinance and operate only in a zone in compliance with Title 20 of the Merced Municipal Code before commencing with any commercial cannabis activity. Any commercial cannabis business without a Commercial Cannabis Business Permit is in violation of this ordinance. The regulations in this article, in compliance with the Compassionate Use Act, the Medical Marijuana Program Act, SB 94, Proposition 64, and the California Health and Safety Code (collectively referred to as “State Law”) do not interfere with the right to use cannabis or medical cannabis as authorized under State Law, nor do they criminalize the possession or commercial activities of cannabis or medical cannabis as authorized under State Law. This ordinance also provides regulations for the cultivation of cannabis for personal use within the City of Merced to ensure the health, safety, and welfare of the residents of the City of Merced.

**SECTION 4. Amendments of Chapters 20.10 and 20.12.**

Table 20.10-1 “Permitted Land Uses in the Commercial Zoning Districts” in Section 20.10.020 of the Merced Municipal Code and Table 20.12-1 “Permitted Land Uses in the Industrial Zoning Districts” in Section 20.12.020 of the Merced Municipal Code under “Medical Marijuana Dispensaries” shall be amended to read as follows: “Refer to Table 20.44-1 in Section 20.44.170 for Permitted Land Uses for All Commercial Cannabis Business Activities.”

**SECTION 5. Amendment of Chapter 20.44.170**

The City of Merced hereby repeals Section 20.44.170 (“Medical Marijuana and Cultivation”) of the Merced Municipal Code in its entirety, and replaces it with the amended Section 20.44.170 as set forth below.

**20.44.170 – REGULATION OF COMMERCIAL CANNABIS ACTIVITIES – COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED**

**20.44.170(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, 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	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(I)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(I)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(I)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(I)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(H)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(H)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(F)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(F)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(J)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(K)

**Footnotes**

1. Only four (4) 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 four (4) 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 19<sup>th</sup> and 16<sup>th</sup> 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 meet 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 Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and 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 Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and as required in Merced Municipal Code Section 20.44.170 (E)(3)(f). No Commercial Cannabis Businesses may be located within a 600 foot-radius from a school, day care center, recreational center, youth center, library or public park 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: 5,001 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

#### **20.44.170(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(B)(1)(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 owner's 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 CO<sub>2</sub>, 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.
  - l. 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.
2. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

#### **20.44.170(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 marijuana or marijuana 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 marijuana or marijuana 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. “**Indoors**” means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 19.
23. “**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.
24. “**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.
25. “**Medical**” or “**Medicinal**” have the same meaning under the terms of this ordinance.
26. “**Medical cannabis goods**” means cannabis, including dried flower, and manufactured cannabis products.

27. **“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.
28. **“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.
29. **“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.
30. **“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.
31. **“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.
32. **“Owner” or “Ownership interest”** means an interest held by a person 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.
33. **“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.
34. **“Patient or qualified patient”** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician’s recommendation.
35. **“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.
36. **“Pest”** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.
37. **“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.
38. **“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.

39. **“Pre-roll”** means dried cannabis flower rolled in paper prior to retail sale.
40. **“Primary Caregiver”** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.
41. **“Private security officer”** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.
42. **“Publicly owned land”** means any building or real property that is owned by a city, county, state, federal, or other government entity.
43. **“Purchase”** means obtaining cannabis goods in exchange for consideration.
44. **“Purchaser”** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.
45. **“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.
46. **“Retail area”** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.
47. **“School”** means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes or as otherwise provided in Health and Safety Code Section 11362.768(h).
48. **“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.
49. **“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.
50. **“Sublet”** means to lease or rent all or part of a leased or rented property.
51. **“State”** means the State of California.
52. **“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
53. **“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.
54. **“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.

- 55. **“Wholesale”** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.
- 56. **“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).

#### **20.44.170(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.

#### **20.44.170(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 or corporation 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 each year, unless sooner revoked. 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 667.5(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 or persons 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)(4)(c), and does not run with the land or with the business. Any change to the business location, organizational structure, or ownership may require a new application with associated fees at the discretion of the Director of Development Services or designee.

## **2. 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.

### **3. 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 Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code. 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 Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code. 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.
- 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 when the permittee applies for that initial permit or if the permittee applies for any additional State licenses. Said notification shall be addressed to the Director of Development Services or his designee at 678 W. 18<sup>th</sup> 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.

**20.44.170(F): Additional Regulations for Dispensary and Retail Sales of Cannabis**

1. Only four (4) 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 four (4) 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, the cannabis dispensary is open, 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 9 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.

**20.44.170(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.
  - 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.
  - 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.

#### **20.44.170(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 his designee may be conducting anytime during the business’s 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. Outdoor manufacturing of cannabis is expressly prohibited.

#### **20.44.170(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. Outdoor cultivation of cannabis is expressly prohibited.

#### **20.44.170(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 his designee may be conducting anytime during the business's regular business hours.

**20.44.170(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 his designee may be conducting 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.
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,

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

**20.44.170(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 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—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. The Director of Development Services shall maintain the “Qualified Application List”.
- 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 21 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. All Cannabis applications received after the initial application period will be placed on the “Waitlist for Dispensaries/Retail Sales” in the order it is received. Applicants placed on the “Waitlist” shall be notified in writing of their “Waitlist” status.



- g. Cannabis applications placed on the “Waitlist for Dispensaries/Retail Sales” will be moved to the “Qualified Applicant List for Dispensaries/Retail Sales” only if the application passes the Phase 1 review and when a Commercial Cannabis Business Permit for Dispensaries/Retail Sales becomes available, whether by creation of a new license, or the forfeiture of an existing one. Applicants moved to the “Qualified Applicant List for Dispensaries/Retail Sales” from the Waitlist will be notified of the change in writing. If the Director of Development Services or designee determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within 21 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.

**h. 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 provides a Live Scan that was conducted within 14 days prior to submitting the application.
- v. Phase 1 application fee is paid.
- 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.

**i. Commercial Cannabis Business Permit—Dispensaries/Retail Sales Selection - Phase 2 – Final Review and Scoring**

The Director of Development Services or his 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, to make the final decision, based on the merit-based scoring system, of successful applicants to recommend to the Planning Commission for the Commercial Cannabis Business Permit—Dispensaries/Retail Sales. 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 as well as complete description of the merit based system and all merit based considerations shall be included with the application forms. Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of anyone holding an ownership interest is completed to the satisfaction of the Chief of Police.
- 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 Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District and meets the distance requirements from sensitive uses; and,
  - b. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing; and,
  - c. No zoning violations exist on the property; and,
  - d. 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.
- j. The Planning Commission will review all Commercial Cannabis Business Permit—Dispensaries/Retail Sales applications and all other relevant information and determine if a CCBP should be granted. 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 21 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. All Cannabis applications received after the initial application period will be placed on the “Waitlist for All Other Cannabis Businesses” in the order it is received. Applicants placed on the “Waitlist” shall be notified in writing of their “Waitlist” status.
- f. Cannabis applications placed on the “Waitlist for All Other Cannabis Businesses” will be moved to the “Qualified Applicant List for All Other Cannabis Businesses” on a one for one basis only if the application passes the Phase 1 review and when the number of applicants on the “Qualified Applicant List” falls below five, and will be notified of the change in writing. At any time, the Director of Development Services may suspend the requirement for a “Waitlist for All Other Cannabis Businesses” if the number of applications does not merit the need for the “Waitlist.” If the Director of Development Services or designee determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within 21 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.

**g. Commercial Cannabis Business Permit—All Other Cannabis Businesses 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 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 provides a Live Scan that was conducted within 14 days prior to submitting the application.
- v. Phase 1 application fee is paid.

- 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.

**h. Commercial Cannabis Business Permit—All Other Cannabis Businesses Selection - Phase 2 – Final Review**

The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and reviewing the information below 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.

- i. Phase 2 application fee is paid and a comprehensive background check of anyone holding an ownership interest is completed to the satisfaction of the Chief of Police.
- 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 Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District and meets the distance requirements from sensitive uses; and,
  - b. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing; and,
  - c. No zoning violations exist on the property; and,
  - d. 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.
- i. The Planning Commission will review all Commercial Cannabis Business applications for All Other Cannabis Businesses and all other relevant information and determine if a CCBP should be granted. 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. Appeal of Denial of Commercial Cannabis Business Permit (All Types)**

The Planning Commission will review all Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted. 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 within thirty (30) calendar days of receiving the appeal.

- 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 of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. 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.

#### **4. 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. A Commercial Cannabis Business Permit holder may file a request to transfer ownership of the business. The request shall be made to the Director of Development Services. The request must be in writing and must be at least 60 days prior to the transfer. The Director of Development Services shall review the request and may require additional background material on the proposed new owner. The Director of Development Services shall notify the permit holder in writing along with the reason for approval or denial of the transfer. The original term of the Commercial Cannabis Business Permit shall stay in effect including the renewal date.
- d. 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.
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

**5. 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 within thirty (30) calendar days of receiving the appeal.
  - 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 within thirty (30) calendar days of receiving the appeal.
    - 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 of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. 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.

## **6. 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 within (thirty) 30 days of receiving the appeal.
  - 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.
  - vii. 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 within thirty (30) calendar days of receiving the appeal.
    - 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 of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the

conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. 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.

**20.44.170(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.

**20.44.170(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 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.

#### **20.44.170(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.

**SECTION 6 : 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 7. 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 20<sup>th</sup> day of November, 2017, and was passed and adopted at a regular meeting of said City Council held on the 4<sup>th</sup> day of December, 2017, by the following called vote:

**AYES: 5      Council Members:** BLAKE, MARTINEZ, MCLEOD, PEDROZO, SERRATTO

**NOES: 2      Council Members:** BELLUOMINI, MURPHY

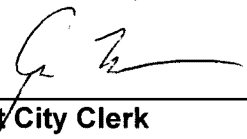
**ABSTAIN: 0      Council Members:** NONE

**ABSENT: 0      Council Members:** NONE

**APPROVED:**


  
\_\_\_\_\_  
**MAYOR**

**ATTEST:  
STEVE CARRIGAN, CITY CLERK**

**BY:**   
\_\_\_\_\_  
**Assistant City Clerk**

**(SEAL)**

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
**City Attorney**      11/28/2017  
**Date**





November 8, 2018

Ariana A. Van Alstine  
916-732-3077 (Direct)  
avanalstine@kennadayleavitt.com

**VIA EMAIL (planningweb@cityofmerced.org) AND U.S. MAIL**

Planning and Permitting Division  
City of Merced  
2222 M Street, Second Floor  
Merced, CA 95340

**Re: Appeal of Decision Regarding Request for Repeal of Interpretation of Ordinance 20.44.170(A)**

Dear Sir or Madam:

We write on behalf of our client WB Pharms requesting to appeal Scott McBride's interpretation of City of Merced Ordinance 20.44.170(A), relating to the zoning of commercial cannabis for indoor cultivation. This request is made in writing pursuant to Merced's Ordinance 20.04.040, and includes the pertinent information and ordinance for review. In sum, WB Pharms believes that it is a mistake to attempt to create a definition of greenhouse cultivation includes indoor cultivation, inconsistent with state regulations.

WB Pharms is applying for an indoor cannabis cultivation license on property located at 1600 West Main Street, in a General Commercial (C-G) zone. Merced ordinance 20.44.170(A) permits certain cannabis businesses as a special use in C-G zones.<sup>1</sup> Further, cannabis businesses are required to conduct business only in the appropriate zones as described in Table 20.44-1 ("The Table"). The Table does not include any zoning requirement specifications or restrictions for "indoor" cultivation. The Table does, however, address "greenhouse" cultivation and specifically prohibits this form of cannabis cultivation in the General Commercial zone.

<sup>1</sup> 20.44.170(A) Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, I-L and I-H zoning districts and planned developments which have the equivalent general plan land use designations of those zones.

00134231.1

**ATTACHMENT B**

Unfortunately, neither “greenhouse” nor “indoor” cultivation are defined by the City of Merced’s applicable ordinance. As such, we assume that Merced uses these terms consistent with how the State of California, Department of Food and Agriculture, has defined them. Here, CalCannabis<sup>2</sup> has defined “greenhouse” cultivation to be “Mixed-Light Cultivation of mature cannabis in a **greenhouse**, hoop-house, glasshouse, conservatory, or other similar structure using light deprivation...”<sup>3</sup> Thus, greenhouse is categorized by the State as a mixed-light cultivation process. In contrast, the State has defined “indoor” cultivation as “cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate about twenty-five watts per square foot.”<sup>4</sup> Using the State’s definition for “indoor” and “greenhouse” cultivation, WB Pharms will be engaging in exclusively indoor cultivation activities. There will be no “greenhouse” cultivation activity at the proposed location.

The Merced zoning Table includes limitations on greenhouse or Mixed-Light cultivation, but is silent on indoor cultivation. Moreover, Merced is permitting cannabis business activities in the G-C zone, and has not specifically excluded indoor cultivation operations from that zone. Thus, relying on the State’s definition of “greenhouse” and “indoor” cultivation, indoor cannabis operations at the proposed location is consistent with Merced’s Ordinance and allowed in the G-C zone.

This interpretation is consistent with the City purpose for G-C districts, “light industrial uses that may impact neighboring uses and often require large parcels and benefit from separation from retail uses.” (Merced Ordinance 20.10.010). Indoor cannabis cultivation fits within the City’s definition of the zone. The provisions around distribution businesses in the same zone would be a good model for indoor cannabis cultivation. However, prior to expending significant time and resources to submit its permit applications to the City of Merced, WB Pharms seeks confirmation from Merced. Our original request was denied and we are seeking to appeal that decision.

Mr. McBride’s reasoning relies heavily on the lack of distinction between the cultivation license types within the City of Merced. As identified above, indoor and mixed-light cultivation are in fact quite different, such that the state recognizes and has independent requirements for each. WB Pharms respectfully requests that the City of Merced make a determination that operating an indoor cultivation operation at the proposed location is consistent with the City’s expectation and enforcement of its Ordinance and some of the latitude it gives Council and staff. WB Pharms looks forward to working with

---

<sup>2</sup> The Department of Food and Agriculture, CalCannabis is the division responsible for licensing and regulating commercial cultivation in the State of California. Business and Professions Code §26012, 26013.

<sup>3</sup> 3 § CCR 8000(t), emphasis added.

<sup>4</sup> 3 § CCR 8000(n).

00134231.1

City of Merced  
November 8, 2018  
Page 3

the City on this process, and is happy to provide the City with any additional information that may assist with this process.

Regards,

KENNADAY LEAVITT OWENSBY PC



Ariana A. Van Alstine

AAV/emh

cc: Stephani Davis, [daviss@cityofmerced.org](mailto:daviss@cityofmerced.org)  
Michael Hren, [hrenm@cityofmerced.org](mailto:hrenm@cityofmerced.org)  
Scott McBride, [mcbrides@cityofmerced.org](mailto:mcbrides@cityofmerced.org)  
Tim Razzari, [tr@razzari.com](mailto:tr@razzari.com)  
Kim Flores, [floresk@cityofmerced.org](mailto:floresk@cityofmerced.org)

00134231.1

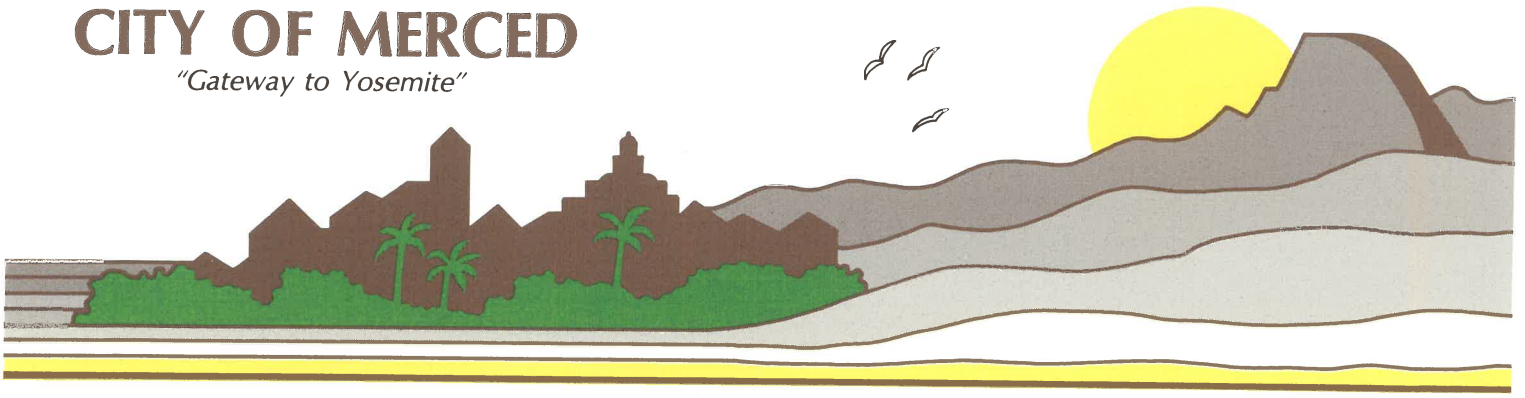
---

621 Capitol Mall, Suite 2500 | Sacramento, CA 95814  
Phone: 916-732-3067 | Fax: 916-732-3061 | E-mail: [whodges@kennadayleavitt.com](mailto:whodges@kennadayleavitt.com)

[WWW.KENNADAYLEAVITT.COM](http://WWW.KENNADAYLEAVITT.COM)

# CITY OF MERCED

*"Gateway to Yosemite"*



Ariana Van Alstine  
Kennaday Leavitt Owensby  
621 Capital Mall, Suite 2500  
Sacramento, CA 95814

Dear Ms. Van Alstine:

I am in receipt of your written request for interpretation submitted on September 17, 2018 of Ordinance 2480, also known as Chapter 20.44.170 of the City of Merced's Zoning Ordinance, and more particularly of the Table found in Section 20.44.170(A), entitled "Zoning Compliance and Commercial Cannabis Business Permit Requirements." Please consider this my formal interpretation pursuant to Merced Municipal Code 20.04.040.

Your request indicates that the issue of concern is whether cannabis cultivation facilities that do not meet the State definition of "greenhouse" may be situated on properties with zoning of General Commercial (C-G) in the City of Merced. While the request notes a particular interest in the property at 1600 West Main Street, the core of the request relates to the C-G zone in general with the details of the specific property having no bearing on the question of interpretation. As such, my interpretation will address the propriety of cultivation activities in the C-G zone in general.

Merced Municipal Code 20.44.170(A) specifies that Land Use Table 20.44-1 (the Table) shall be used to determine whether a cannabis business is not permitted ("X") or permitted ("P"). The Table clearly indicates that cultivation of any type is only authorized in the I-L and I-H zones. The Table indicates that the Land Use Classification of "Greenhouse" Types A, B, C, and D are prohibited in the C-G zone. The Table also shows that the Activity Type of "Cultivator" is prohibited in the C-G Zone for each Land Use Classification that is listed. In no instance is there any permitted "Cultivator" Activity Type listed for the C-G zone in the Table.

Section 20.44.170(C), Subsection 10, "Definitions", of the Zoning Ordinance states that, "Cultivation" means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis."

Per 20.44.170(I), Subsection.7, "Additional Requirements for Cannabis Cultivation Businesses", of the Zoning Ordinance, "Outdoor cultivation of cannabis is expressly prohibited."

## ATTACHMENT C

20.44.170(C), Subsection 22, "Definitions", of the Zoning Ordinance states that, "'Indoors' means within a fully enclosed and secure structure as the structure as defined... in 20.44.170(C), Subsection 20."

Since the Zoning Ordinance expressly prohibits outdoor cultivation, for any cultivation to be permitted, it must meet the definition of "indoors" provided above, regardless of whether the facility meets the State definition of "greenhouse" or "indoor". I find no indication in Chapter 20.44.170 of the Zoning Ordinance that there should be a distinction between the treatment of mixed-light cultivation facilities and the treatment of facilities relying solely on artificial light, especially as they both fall under the definitions of "Cultivation" and "Indoors" in the "Definitions" section, 20.44.170(C). In fact, the Cannabis Business Permit Application for Cultivation refers to "Indoor/Mixed Light" cultivation interchangeably.

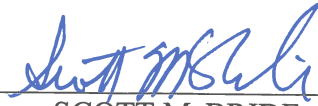
In the event that it were argued that a facility meeting the State definition of "indoor" were a distinct land use from a facility meeting the State definition of "greenhouse", Section 20.04.030(D), Subsection 2, "Unlisted Land Uses" of the Zoning Ordinance states that, "...the absence of [a] use in the land use regulation table shall be interpreted as a prohibition of the use in the respective zoning district...". Additionally, Section 20.44.170(A), "Zoning Compliance and Commercial Cannabis Business Permit Requirements" states, "If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted." If it were contended that the Table only indicates the impermissibility in the C-G zone of a "greenhouse" and leaves the permissibility of an "indoor" facility as defined by the State unspoken, the above statements regarding unlisted land uses would indicate that such "indoor" facilities are prohibited, as the Table does not list them.

Furthermore, Section 20.04.030(D), Subsection 3, "Unlisted Land Uses" states, "When the Director of Development Services determines that a proposed use is equivalent to a listed use, the proposed use shall be treated in the same manner as the listed use with respect to... all applicable requirements of the Zoning Ordinance." By my determination, for the purposes of the Zoning Ordinance, mixed-light cultivation facilities and facilities relying solely on artificial light are equivalent uses, and should therefore be considered with the same zoning requirements. Thus, facilities meeting the State definition of "indoor" are prohibited in the same zoning districts as facilities meeting the State definition of "greenhouse".

**Based upon the above, I have determined that all commercial cannabis cultivation facilities are prohibited in the C-G zone of the City of Merced.**

You have the right to file an appeal of this determination to the Planning Commission as provided in Merced Municipal Code 20.04.040(E). If you choose to file an appeal, it must be submitted in writing to me within thirty (30) days of the date of this letter.

Dated: October 10, 2018

By   
SCOTT McBRIDE  
Director of Development Services  
City of Merced



September 17, 2018

Ariana A. Van Alstine  
916-732-3077 (Direct)  
avanalstine@kennadayleavitt.com

**VIA PERSONAL DELIVERY AND E-MAIL (mcbrides@cityofmerced.org)**

Scott McBride  
Director of Development Services  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340

Re: Request for Interpretation of Ordinance 20.44.170(A)

Dear Mr. McBride:

We write on behalf of our client WB Pharms requesting confirmation regarding the City of Merced Ordinance 20.44.170(A), relating to the zoning of commercial cannabis for indoor cultivation. This request is made in writing pursuant to Merced's Ordinance 20.04.040, and includes the pertinent information and ordinance for review.

WB Pharms is applying for an indoor cannabis cultivation license on property located at 1600 West Main Street, in a General Commercial (C-G) zone. Merced ordinance 20.44.170(A) permits certain cannabis businesses as a special use in C-G zones.<sup>1</sup> Further, cannabis businesses are required to conduct business only in the appropriate zones as described in Table 20.44-1 ("The Table"). The Table does not include any zoning requirement specifications or restrictions for "indoor" cultivation. The Table does, however, address "greenhouse" cultivation and specifically prohibits this form of cannabis cultivation in the General Commercial zone.

Unfortunately, neither "greenhouse" nor "indoor" cultivation are defined by the City of Merced's applicable ordinance. As such, we assume that Merced uses these terms consistent with how the State of California, Department of Food and Agriculture, has

---

<sup>1</sup> 20.44.170(A) Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, I-L and I-H zoning districts and planned developments which have the equivalent general plan land use designations of those zones.

00134231.1

---

**ATTACHMENT D**

---

621 Capitol Mall, Suite 2500 | Sacramento, CA 95814  
Phone: 916-732-3067 | Fax: 916-732-3061 | E-mail: whodges@kennadayleavitt.com

WWW.KENNADAYLEAVITT.COM



defined them. Here, CalCannabis<sup>2</sup> has defined “greenhouse” cultivation as “Mixed-Light Cultivation of mature cannabis in a **greenhouse**, hoop-house, glasshouse, conservatory, or other similar structure using light deprivation...”<sup>3</sup> Thus, greenhouse is categorized by the State as a mixed-light cultivation process. In contrast, the State has defined “indoor” cultivation as “cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate about twenty-five watts per square foot.”<sup>4</sup> Using the State’s definition for “indoor” and “greenhouse” cultivation, WB Pharms will be engaging in exclusively indoor cultivation activities. There will be no “greenhouse” cultivation activity at the proposed location.

The Table includes limitations on greenhouse or Mixed-Light cultivation, but is silent on indoor cultivation. Moreover, Merced is permitting cannabis business activities in the G-C zone, and has not specifically excluded indoor cultivation operations from that zone. Thus, relying on the State’s definition of “greenhouse” and “indoor” cultivation, we have advised our client that their indoor cannabis operation at the proposed location would be consistent with Merced’s Ordinance and is allowed in the G-C zone.

We believe our advice is consistent with the City purpose for G-C districts: “light industrial uses that may impact neighboring uses and often require large parcels and benefit from separation from retail uses.” (Merced Ordinance 20.10.010). Further, we believe that indoor cannabis cultivation fits within the City’s definition of the zone. However, prior to expending significant time and resources to submit its permit applications to the City of Merced, WB Pharms has asked that we seek confirmation from you as to our legal advice. As such, please confirm that operating an indoor cultivation operation at the proposed location is consistent with the City’s expectation and enforcement of its Ordinance. WB Pharms looks forward to working with the City on this process, and is happy to provide the City with any additional information that may assist with this process.

Regards,

KENNADAY LEAVITT OWENSBY PC



Ariana A. Van Alstine

AAV/emh

---

<sup>2</sup> The Department of Food and Agriculture, CalCannabis is the division responsible for licensing and regulating commercial cultivation in the State of California. Business and Professions Code §26012, 26013.

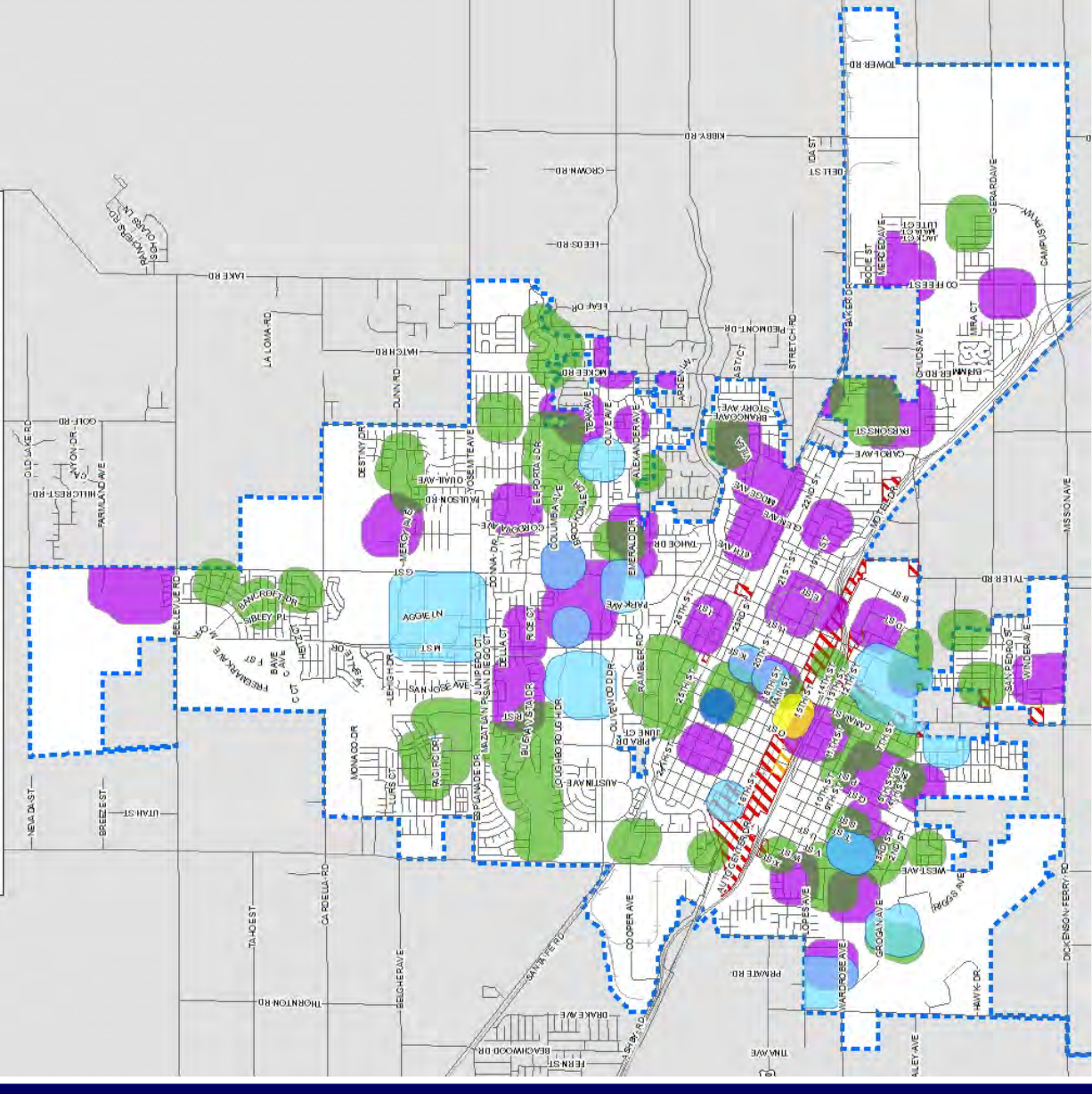
<sup>3</sup> 3 § CCR 8000(t), emphasis added.

<sup>4</sup> 3 § CCR 8000(n).

# GENERAL COMMERCIAL (C-G)

- Would allow Medical or Adult Use Dispensaries/Retail Sales
- Would allow Testing Labs
- Would Allow Distribution Businesses If:
  - Parcel is over 20,000 square feet
  - All loading & unloading is done behind the fence
- No other Commercial Cannabis Businesses would be Allowed
- 1,000-foot buffer from schools for dispensaries/retail sales only
- 600-foot buffer from other sensitive uses applies to all other cannabis businesses.

## GENERAL COMMERCIAL 600 FEET FROM SCHOOLS



**CITY OF MERCED  
Planning Commission**

**Resolution #\_\_\_\_\_**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 9, 2019, held a public hearing and considered an **Appeal to Zoning Determination #18-01**, by WB Pharms. Appellant is appealing the determination of the Director of Development Services regarding the prohibition in the General Commercial zone of all cannabis cultivation facilities, including indoor cultivation utilizing exclusively artificial lighting; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through C of Staff Report #19-01; and,

**NOW THEREFORE**, after discussing all the issues, the Merced City Planning Commission does resolve to hereby affirm the decision of the Development Services Director regarding Zoning Determination #18-01.

Upon motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

PLANNING COMMISSION RESOLUTION # \_\_\_\_\_

Page 2

January 9, 2019

Adopted this 9<sup>th</sup> day of January 2019

\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

\_\_\_\_\_  
Secretary