

Merced City Council
678 W 18th St.
Merced, CA 95340



September 26, 2018

Attn: Mayor Mike Murphy; Council Member Michael Belluomini; Council Member Kevin Blake; Council Member Josh Pedrozo; Council Member Anthony Levi Martinez; Mayor Pro Tempore Jill McLeod; Council Member Matthew Serratto.

Cc: City Manager Steve Carrigan; Development Services Director Scott McBride

Re: Appeal from 9/19/18 Merced Planning Commission Approval of CCBP #18-14R ("Harvest of Merced") at 863 W 15th St

Dear Mayor Murphy and Members of the Council,

On behalf of CCBP #18-21R ("Medallion Wellness") at 808 W 16th St, hereinafter referred as 'Medallion', I, Michael O'Leary, hereby appeal the City of Merced Planning Commission's Approval of the above referenced Commercial Cannabis Business (Retail) applicant, 'Harvest of Merced' hereinafter referred as 'Harvest'.

Grounds for Appeal: Violation of Merced Municipal Code Section 20.44.170 (E), subsection 3f.

On September 18, 2018 during City staff's presentation of the Harvest project, I noted that the project's location was within a close vicinity to the Wolfe Education Center located at 732 W 13th Street, which is designated by the City as a sensitive use school site. Following the presentation, I contacted Medallion Representative Zach Drivon to research the Harvest project's proximity to the Wolfe Education Center.

Immediately prior to the Planning Commission decision at issue, on September 19, 2018 Mr. Drivon provided communication with information to the City Clerk, Planning Commission Chair Robert Dylina, Planning Department Staff Member Michael Wren, City Attorney Kim Flores, and Development Services Director Scott McBride regarding the proximity of the Harvest location to the Wolfe Education Center.

In sum, the information indicated that the Commission's approval of the Harvest location would violate the above referenced Municipal Code Section which provides in relevant part:

"No Cannabis dispensary may be located within a 1,000-foot radius from a school... The distance specified in this section shall be the horizontal distance measured in a straight line of the lot on which the commercial cannabis business shall be located without regard to intervening structures."

This communication prompted staff and Chair Dylina to re-open public comment so that the Commissioners could receive and consider the information prior to their decision. Mr. Drivon provided 'screen shots' of google maps measurements of the distance between the Harvest location and the Wolfe Education Center which illustrated a separation of only 981 feet. The screen shots are attached as 'Exhibit A' and 'Exhibit B'.

In response to inquiries from several commissioners following Mr. Drivon's presentation, City staff indicated the following:

1. The Wolfe Education Center was marked as a sensitive use 'School' location following the City's confirmation that K-12 instruction was 'frequently' provided at that location.
2. The Planning Department's approval of the Harvest site as an eligible location relative to its proximity to the Wolfe Education Center was based solely in reliance on the City's Cannabis Ordinance Web Application Mapping Tool, and not on an actual measurement by a licensed surveyor.

During the discussion of the proximity issue, staff and commissioners exchanged opinions and commentary regarding their confidence in the accuracy of the Mapping Tool, and lack of confidence in google maps as reliable measures of determination on this issue.

However, the landing page for the mapping tool link contains the following disclaimer:

"[Disclaimers Regarding Use of this Mapping Tool]

Use of this online tool is intended for informational purposes and is not binding confirmation that a property complies with any or all aspects of the City of Merced's requirements to obtain a Commercial Cannabis Business Permit. Determinations of zoning compliance, distance from sensitive uses, and other requirements will be made by the Planning Department of the City of Merced in accordance with the regulations set forth by the Merced City Council in Ordinance 2480." A printout of the landing page disclaimer is attached as 'Exhibit C'.

Additional Background:

On January 26, 2018 the City hosted an Application Workshop where zoning maps were provided to illustrate appropriately zoned areas within the City of Merced for various commercial cannabis activities. Staff members were also present to field inquiries and conduct assessments of specific properties using the Mapping Tool.

A City representative assisted Mr. Drivon in regard to the Medallion project, and informed him that the Mapping Tool indicated that the 808 16th Street location was itself within 1,000 feet of the Wolfe Education Center. Since these results contradicted Medallion's prior due diligence as to its proximity to sensitive uses in the area, it enlisted the services of licensed Surveyor, Michael Farley (Land Surveyor # 6939) to prove the eligibility of the 808 16th Street location relative to its proximity to the Wolfe Education Center.

The Land Survey results for the 808 16th street location confirmed a distance of 1136.83 feet between the Medallion Location and the Wolfe Education Center. Following telephone conversations on the issue on or around February 9, 2018, Mr. Drivon provided the Survey report to Development Services Director Scott McBride. Mr. Drivon was informed the following week by Planning Department staff member Michael Wren via telephone that staff had reviewed and conceded to the accuracy of the Farley Survey. The '808 16th Land Survey Report' is attached as 'Exhibit D'.

Furthermore, On January 29, 2018 Medallion Representative Mike Lynch contacted Merced County Superintendent of Schools, Steve Tietjen who advised that the Wolfe Education Center site was used for educational purposes, including 'foster youth'. The email exchange is attached as 'Exhibit E'.

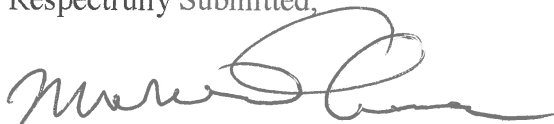
Additionally, an ABC news report from September 20, 2018 regarding the Planning Commission report at issue also noted "The Merced County Office of Education did confirm there is an elementary school site near potential dispensary site on 15th street." The news article is attached as 'Exhibit F'.

Conclusion: Land Survey confirms ineligibility of the Harvest location

On September 20, 2018 Medallion again contacted Mr. Farley to conduct a measurement of the distance between the Harvest Location and the Wolfe Education Center. Mr. Farley took measurements on the same day and produced a Land Survey Report on September 24. The results of this report show that the Harvest location is located only 977.27 feet away from the Wolfe Education Center and is thus ineligible as a Commercial Cannabis Dispensary location under the Merced Municipal Code. Mr. Farley's '863 15th Land Survey Report' is attached as 'Exhibit G'.

Based on City staff and Planning Commission reliance on the Mapping Tool, information provided to the Planning Commission as to the accuracy of this system during the Hearing, and resulting erroneous determination of eligibility relative to the distance between the Harvest Location and Wolfe Education Center, City Council should rightfully overturn the Planning Commission's Approval of the Harvest location for a Commercial Cannabis Business Permit.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Michael O'Leary", written over a horizontal line.

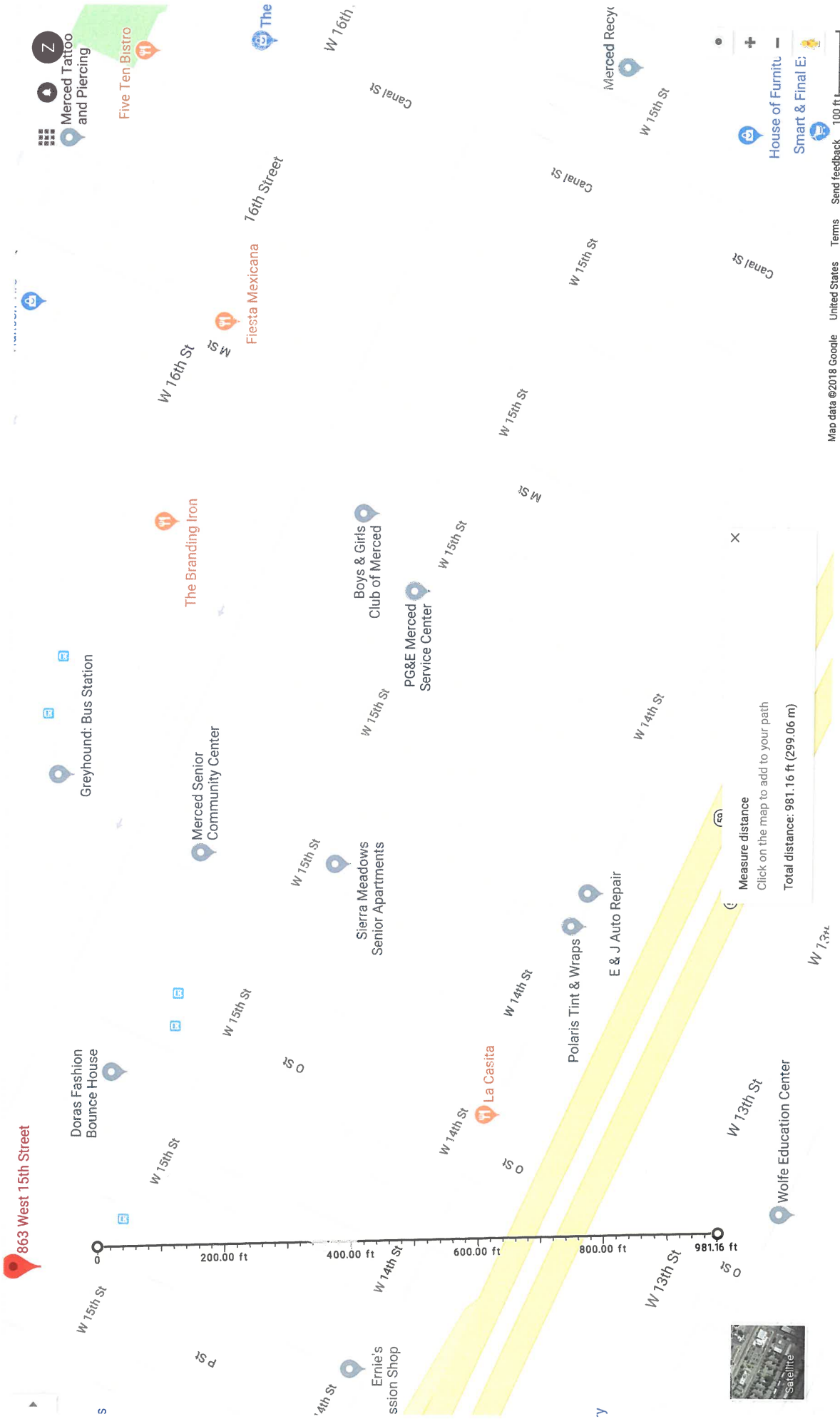
Michael O'Leary
Medallion Wellness

'Exhibit A'
Google Maps Screen Shot 1



Measure distance
Click on the map to add to your path
Total distance: 981.16 ft (299.06 m)

'Exhibit B'
Google Maps Screen Shot 2



'Exhibit C'

Mapping Tool Disclaimer

Terms of City of Merced Cannabis Ordinance (No. 2480)

- Specific commercial cannabis business types are allowed as special uses in the City of Merced within certain commercial and industrial zoning districts. This also applies within Planned Development zones that have equivalent General Plan land use designations to those zones listed in Table 20.44-1 (provided as a downloadable PDF and as a widget located in the upper left within the mapping application). Those business types that are permitted in each listed zone are noted with a "P", and those businesses not allowed in a listed zone are noted with an "X"
- All commercial cannabis businesses must obtain a Commercial Cannabis Business Permit (CCBP) from the City. The number of dispensaries/retail sales businesses is limited to a maximum of four (4). CCBP's must be renewed each year and annual regulatory fees must be paid to ensure monitoring and enforcement.
- The process for obtaining a Commercial Cannabis Business Permit is as follows:
 - For dispensaries/retail sales CCBP's, there is a limit of 4 permits. Because of this, these applications will undergo a 2-Phase review, consisting of:
 - A Phase 1 application review including confirmation of zoning compliance and completion of all required documents; and,
 - A Phase 2 detailed background check of all owners to the satisfaction of the Police Chief and a merit-based review of applications that passed Phase 1. This review will be overseen by a panel consisting of the City Manager, Police Chief, and the Director of Development Services or their assigns. The panel will recommend the top 4 applications to the Planning Commission; and,
 - The top 4 applications will have Planning Commission public hearings held, and the CCBP permit will be approved or denied.
- For all other cannabis businesses with no limitation on the number of permits:
 - There is no merit-based process and all applications that pass Phase 1 and extensive background checks will go to the Planning Commission for public hearings.
- Specific operating requirements that address security, product storage, operating hours, disposal, etc., are provided for all the different types of cannabis businesses (cultivation, manufacturing, distribution, testing, deliveries, and retail sales/dispensaries). In general, all cannabis activities, including cultivation, must take place indoors.
- Distance requirements from sensitive land uses are also required as follows:
 - A Cannabis Business that involves a Dispensary/Retail Sales is not allowed within 1,000 feet of a school;
 - A Cannabis Business of any other type (not retail sales) is not allowed within 600 feet of a school.
 - A Cannabis Business of any type is not allowed within 600 feet of a day care center, a youth center, a public park (not including bike paths), or a library.
- Specific regulations are imposed on the cultivation of cannabis for personal use in private residences in residential zones. In general, the cultivation of cannabis for personal use is only permitted indoors and is limited to six (6) plants as per State law.

Disclaimers Regarding Use of this Mapping Tool

- **Use of this online tool is intended for informational purposes and is not binding confirmation that a property complies with any or all aspects of the City of Merced's requirements to obtain a Commercial Cannabis Business Permit. Determinations of zoning compliance, distance from sensitive uses, and other requirements will be made by the Planning Department of the City of Merced in accordance with the regulations set forth by the Merced City Council in Ordinance 2480.**

☐ I have read, understood, and agree to the terms of the City of Merced's Ordinance 2480 and the Disclaimers regarding the use of this mapping tool.

Agree

'Exhibit D'
808 16th Land Survey
Report

Untitled Map

Write a description for your map.

Legend

NORTH
1932343.004
EAST
6564790.123

DISTANCE = 1163.83' FROM THE CLOSEST PROPERTY
CORNERS BETWEEN 808 W. 16th & 732 W. 13th
MERCED, CA.
COORDINATES ARE BASED UPON CALIFORNIA ZONE
COORDINATES, USING "TOPCON GPS HIPER V"
MICHAEL FARLEY
LAND SURVEYOR # 6939
FEB. 8, 2018
209-649-9905
MFSURVEYOR@AOL.COM

NORTH
1931218.239
EAST
6564491.114

Google Earth

© 2018 Google

700 ft

'Exhibit E'
Tietjen-Lynch Email
Exchange

From: mike@mikelynchconsulting.com
Subject: Fwd: 732 w. 13th
Date: September 26, 2018 at 9:05 AM
To: Zach Drivon zach@drivonconsulting.com



Begin forwarded message:

From: Steve Tietjen <STietjen@mcoe.org>
Subject: Re: 732 w. 13th
Date: January 29, 2018 at 4:06:57 PM PST
To: MikeLynchConsulting <mike@mikelynchconsulting.com>

It's a combination, some special ed 18-22, some adult ed, some foster youth.

Steve M. Tietjen, Ed.D.

County Superintendent of Schools

MERCED COUNTY OFFICE OF EDUCATION
632 West 13th Street
Merced CA 95341
(209) 381-6601
(209) 381-6767 Fax
stietjen@mcoe.org

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On 1/29/18, 9:31 AM, "MikeLynchConsulting" <mike@mikelynchconsulting.com> wrote:

How does district use The Wolfe Center next to your headquarters? it looks like classrooms. It is adult ed or K-12?

'Exhibit F'
ABC News Report Re:
Merced Dispensaries

abc30

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Fresno CountyNorth ValleySouth ValleyFoothills



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MARIJUANA

Merced planning commission approves four marijuana dispensaries

EMBED <>

MORE VIDEOS

Four marijuana dispensaries are approved to come to Merced, and some could open their doors by the end of the year.

By [Nathalie Granda](#)

Published: September 26, 2018 11:01 AM PT

MERCED, Calif. (KFSN) — Four dispensaries are approved to come to Merced, and some could open their doors by the end of the year:

1. Blue Fire - to be located along Olive Avenue
2. The Green Door - to be located along Main Street
3. Manzanita - to be located on the 1500 block of 18th Street
4. The Harvest of Merced - to be located inside an old warehouse on 15th Street



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"They're going to hire local people, they're going to use local contractors, they're going to inject money into the local community," City Development Services Scott McBride said.

The approval comes after two nights of public hearings.



Nathalie Granda

@NathalieABC30

#NEW : Following the public hearings, The Merced Planning Commission approved the 4 top/picked dispensaries. These renderings are what they could look like when finished! 1st is Blue Fire, 2nd is Green Door, 3rd Manzanita, & 4th is Harvest of Merced @ABC30

10:42 AM - Sep 20, 2018

10 See Nathalie Granda's other Tweets

All four of the businesses plan to have extensive video and alarm security systems, with hired security during operating hours. City officials say during the meeting, however, an applicant named Medallion Wellness spoke against the 4th highest ranked dispensary, The Harvest of Merced, because of its location.

"They are concerned that the location for Harvest of Merced might be too close to a school, so they sent some information for the commission to consider. They did review it, they did respond to questions and ultimately voted to review the application," McBride said.

The Merced County Office of Education did confirm there is an elementary school site near potential dispensary site on 15th Street.

The owner of the fifth highest ranked applicant, Medallion Wellness, stated in an email to Action News that the company plans to do their own independent investigation before they decide to appeal the planning commission's approval of the fourth dispensary, The Harvest of Merced.

Other applicants are not too happy with the winners.

Charles Veilleux, the owner of the Stone Bowl, was hoping to open a medicinal dispensary. It cost him about \$10,000 to apply. He was under the impression local



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TOP STORIES



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business owners would get additional points but said the dispensaries chosen are all from out of the area.

"That to me seems like they're showing favoritism how much many can you put into the community, rather than supporting local businesses that have been struggling to make a living," said Veilleux.

People can appeal any of the four choices before Thursday.

If there is an appeal, there will be hearing with the city council within 30 days, and councilmembers will ultimately make the final decision.

City officials said if there aren't any appeals, the city will issue a certificate and businesses can start the process for state licensing.

Report a Typo

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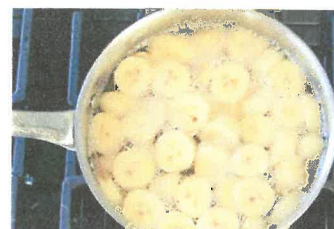
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'Exhibit G'
863 15th Land Survey
Report

Untitled Map

Write a description for your map.

Legend

NORTH
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EAST
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DISTANCE = 977.27' FROM THE CLOSEST PROPERTY
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SEPTEMBER 24th, 2018

NORTH
1931218.239
EAST
6564491.114

Google Earth

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