



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

Minutes Planning Commission

Wednesday, March 17, 2021

7:00 PM

A. CALL TO ORDER

Chairperson HARRIS called the Regular Meeting to order at 7:00 PM

Clerk's note: The meeting was held via teleconference per Governor Newsom's Executive Order N-29-20 and roll call votes were taken.

A.1. Moment of Silence

A.2. Pledge of Allegiance to the Flag

Commissioner DELGADILLO led the Pledge of Allegiance to the Flag.

B. ROLL CALL

Clerk's Note: The Planning Commission has one vacancy at this time.

Present: 5 - Chairperson Michael Harris, Member Stephanie Butticci, Member Dorothea White, Member Jose Delgadillo, and Vice Chair Mary Camper

Absent: 1 - Member Robert Dylina

C. ORAL COMMUNICATIONS

There were no public comments.

D. CONSENT CALENDAR

D .1 **SUBJECT:** Planning Commission Minutes of March 3, 2021

ACTION:

Approving and filing the Planning Commission Minutes of March 3, 2021

A motion was made by Member White, seconded by Member Delgadillo, to approve Consent Calendar. The motion carried by the following vote:

Aye: 5 - Chairperson Harris
Member Butticci
Member White
Member Delgadillo
Vice Chair Camper

No: 0

Absent: 1 - Member Dylina

E. PUBLIC HEARINGS AND ACTION ITEMS

E.1

SUBJECT: General Plan Amendment #20-02 and Site Utilization Plan Revision #1 to Planned Development #12, initiated by Robert Vermeltfoort on behalf of REM Land Group, LLC, Property Owner. This application involves consideration of a change from Commercial Office (CO) and Industrial (IND) to Business Park. The proposed Site Utilization Plan envisions a proposed mini-mart with fuel island, a proposed drive-through business and a proposed office/retail building. The property is generally located at the northeast corner of State Highway 59 and Olive Avenue, within a zoning classification of Planned Development (P-D) #12. **PUBLIC HEARING**

ACTION: PLANNING COMMISSION:

Recommendation to City Council
Environmental Review #20-36 (*Mitigated Negative Declaration*)
General Plan Amendment #20-02
Site Utilization Plan Revision #1 to Planned Development (P-D) #12

CITY COUNCIL:

Approve/Disapprove/Modify
Environmental Review #20-36 (*Mitigated Negative Declaration*)
General Plan Amendment #20-02
Site Utilization Plan Revision #1 to Planned Development (P-D) #12

SUMMARY

This is a request to amend the General Plan Designation from Commercial Office (CO) and Industrial (IND) to Business Park (B-P) for a 3.38-acre site located at the northeast corner of State Highway 59 and Olive Avenue. Additionally, the request includes Site Utilization Plan (SUP) Revision #1 to Planned Development (P-D) #12 to allow for a proposed mini-mart with fuel island, a proposed drive-through business, and a proposed office/retail

building. Staff is recommending approval of the request with conditions.

RECOMMENDATION

Planning Staff recommends that the Planning Commission recommend approval to the City Council of Environmental Review #20-36 (Mitigated Negative Declaration), General Plan Amendment #20-02, and Site Utilization Plan Revision #1 to Planned Development #12 (including the adoption of the Draft Resolution at Attachment A) subject to the conditions in Exhibit A and the findings/considerations in Exhibit B, and the Mitigation Monitoring Program in Exhibit C of the Draft Resolution.

Principal Planner HREN reviewed the report on this item. For further information, refer to Staff Report #21-149. (Members of the public were given the opportunity to leave email and voicemail messages as well prior to the meeting, none were received).

Public testimony was opened at 7:14 PM

Speakers Via Teleconference in Favor:

Mike Singelyn, Applicant

Robert Vermelmfoort, Architect

There were no speakers in opposition to the project.

Public testimony was closed at 7:18 PM

A motion was made by Member Delgadillo, seconded by Member White, to recommend to the City Council adoption of a Mitigated Negative Declaration and a Mitigation Monitoring Program (Exhibit C of Planning Commission Resolution #4060) regarding Environmental Review #20-36 and approval of General Plan Amendment #20-02 and Site Utilization Plan Revision #1 to Planned Development (P-D) #12, subject to the Findings and Conditions set forth in Staff Report #21-149 (Resolution #4060).

Aye: 5 - Chairperson Harris
Member Buttici
Member White
Member Delgadillo
Vice Chair Camper

No: 0

Absent: 1 - Member Dylina

E.2

SUBJECT: Zoning Ordinance Amendment #21-01, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend

Merced Municipal Code Sections 20.74 (Appeals), 20.44.170 (Commercial Cannabis Businesses), 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice and Hearings). This amendment would clarify that appeals of actions by the Planning Commission, Site Plan Review Committee, and the Director of Development Services would be scheduled for a public hearing by the appropriate review authority and heard within 90 days unless otherwise mutually agreed to by the applicant and appellant; and modify the appeal procedures for Commercial Cannabis Business Permits to match the same language (the current requirement is 30 days). This amendment would also clarify that any action of the Planning Commission requires a vote of at least four members of the Planning Commission for all actions listed in Table 20.64-1 (Review and Decision-Making Authority), including Conditional Use Permits and other permits, approvals, and recommendations. ***PUBLIC HEARING**

ACTION PLANNING COMMISSION:

Recommendation to City Council

Environmental Review #21-03 (*Categorical Exemption*)

Zoning Ordinance Amendment #21-01

CITY COUNCIL:

Approve/Disapprove/Modify

Environmental Review #21-03 (*Categorical Exemption*)

Zoning Ordinance Amendment #21-01

SUMMARY

Several amendments to the Zoning Ordinance will be considered involving the timing of appeals for various permits considered by the Planning Commission, including Commercial Cannabis Business Permits, and clarifying the number of votes that are required for the Planning Commission to approve action items. Staff is recommending approval.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval to the City Council of Environmental Review #21-03 [Categorical Exemption] and Zoning Ordinance Amendment #21-01 subject to the findings/considerations in Exhibit A and the Draft Ordinance at Exhibit B of the Draft Resolution at Attachment A.

Planning Manager ESPINOSA reviewed the report on this item. For further information, refer to Staff Report #21-205. (Members of the public were given the opportunity to leave email and voicemail messages as well prior to the meeting, none were received).

There was no one present wishing to speak regarding the project; therefore, public testimony was opened and closed at 7:32 PM

A motion was made by Member Camper, seconded by Member Delgadillo, to recommend to the City Council adoption of a Categorical Exemption regarding Environmental Review #21-03 and approval of Zoning Ordinance Amendment #21-01, subject to the Findings and as outlined in the draft Ordinance set forth in Staff Report #21-205 (RESOLUTION #4061). The motion carried by the following vote:

Aye: 5 - Chairperson Harris
Member Butticci
Member White
Member Delgadillo
Vice Chair Camper

No: 0

Absent: 1 - Member Dylina

E.3

SUBJECT: Study Session on General Plan and Zoning Ordinance

ACTION: Discussion/Questions/No Action Required

SUMMARY

Per the request of the Planning Commission, City staff will provide an overview of the *Merced Vision 2030 General Plan* and the Merced Zoning Ordinance.

RECOMMENDATION

Planning staff will be available for questions; no action is required.

Planning Manager ESPINOSA gave a slideshow presentation providing details on the General Plan and Zoning Ordinance.

Clerk's Note: No formal Commission action was taken on this item.

F. INFORMATION ITEMS

F.1

SUBJECT: Report by Planning Manager of Upcoming Agenda Items

ACTION

Information only.

Planning Manager ESPINOSA went over items for the next several Planning Commission meetings.

F.2**SUBJECT: Calendar of Meetings/Events**

Mar. 15 City Council, 6:00 p.m. **(By Teleconference)**
17 Planning Commission, 7:00 p.m. **(By Teleconference)**
Apr. 5 City Council, 6:00 p.m. **(May be by Teleconference)**
7 Planning Commission, 7:00 p.m. **(By Teleconference)**
19 City Council, 6:00 p.m. **(May be by Teleconference)**
21 Planning Commission, 7:00 p.m. **(By Teleconference)**
27 Bicycle/Pedestrian Advisory Commission, 4:00 p.m. **(By Teleconference)**
May 3 City Council, 6:00 p.m. **(May be by Teleconference)**
5 Planning Commission, 7:00 p.m. **(By Teleconference)**
17 City Council, 6:00 p.m. **(May be by Teleconference)**
19 Planning Commission, 7:00 p.m. **(By Teleconference)**

G. ADJOURNMENT

Clerk's Note: The Regular Meeting adjourned at 8:32 PM

A motion was made by Member White, seconded by Member Camper, to adjourn the Regular Meeting. The motion carried by the following vote:

Aye: 5 - Chairperson Harris
Member Butticci
Member White
Member Delgadillo
Vice Chair Camper

No: 0

Absent: 1 - Member Dylina

CITY OF MERCED
Planning Commission

Resolution #4060

WHEREAS, the Merced City Planning Commission at its regular meeting of March 17, 2021, held a public hearing via teleconference and considered **General Plan Amendment #20-02 and Site Utilization Plan Revision #1 to Planned Development (P-D) #12**, initiated by Robert Vermeltfoort, on behalf of REM Land Group, LLC, property owner(s). The application involves consideration of a change from the current General Plan land use designations of Commercial Office and Industrial to Business Park. The proposed Site Utilization Plan envisions a proposed mini-mart with fuel island, a proposed drive-through business and a proposed office/retail building. The property is generally located at the northeast corner of State Highway 59 and Olive Avenue. The property is more particularly described as Adjusted Parcel 1 as described in the Grant Deed recorded as Document No. 2020047663, on December 10, 2020, in Merced County Records; also known as a portion of Assessor's Parcel Number (APN) 058-030-037; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J of Staff Report # 21-149 (Exhibit B); and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit C) regarding Environmental Review #20-36, and recommend approval of General Plan Amendment #20-02 and Site Utilization Revision #1 to Planned Development (P-D) #12 subject to the Conditions set forth in Exhibit A, the Findings set forth in Exhibit B, and the Mitigation Monitoring Program in Exhibit C, attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Delgadillo, seconded by Commissioner White, and carried by the following vote:

AYES: Commissioners Butticci, Camper, Delgadillo, White, and Chairperson Harris
NOES: None
ABSENT: Commissioners Dylina (one vacancy)
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4060

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March 17, 2021

Adopted this 17th day of March, 2021

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Kim Espinosa

Secretary

Exhibits:

Exhibit A – Conditions of Approval

Exhibit B – Findings/Considerations

Exhibit C – Mitigation Monitoring Program

Conditions of Approval
Planning Commission Resolution #4060
General Plan Amendment #20-02, Site Utilization Plan Revision #1 to
Planned Development (P-D) #12

1. The proposed project shall be constructed/designed generally as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) - Attachments C and D of Planning Commission Staff Report #21-149, except as modified by the conditions.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the

City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.

5. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
6. Approval of the General Plan Amendment and Site Utilization Plan Revision is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc.. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
7. Community Facilities District (CFD) formation is required for annual operating costs for storm drainage, public landscaping within State Highway rights-of-way, street trees, and streetlights. CFD procedures shall be initiated before issuance of the first building permit and approved prior to any parcel map recording or sale of any part of the project. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
8. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #20-36 (Attachment E of Planning Commission Staff Report #21-149).

9. All signs shall comply with the North Merced Sign Ordinance and Section 20.62.040 (E) of the City's Zoning Ordinance for signs in a Planned Development (P-D) zone. Sign locations as shown on the site plan are not approved at this time, including the sign on Highway 59 shown in Caltrans' right-of-way.
10. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
11. Parking lot trees shall be installed per City Parking Lot Landscape Standards and Section 20.38.070 (F). At a minimum, parking lot trees shall be provided at a ratio of one tree for every six parking spaces. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list).
12. All projects on this site shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
13. Prior to issuance of the first grading/building permit for any project on the site, the applicant shall demonstrate compliance with San Joaquin Valley Air Pollution Control District Rule 9510 to the City's Planning Department. Changes to the site plan resulting from compliance with Rule 9510 are subject to review by City Staff or the Planning Commission, as determined by the Director of Development Services.
14. Bicycle parking for all projects on the site shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
15. All landscaping on the site shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 – Landscaping.
16. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with drought conditions.

17. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
18. A fire control room may be required for the buildings on the site. The applicant shall work with the Fire Department to determine the location of the fire control room in the event of its necessity. Additional fire control rooms may be required at the discretion of the Fire Chief.
19. Each building shall be provided with a Fire Department Connection.
20. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
21. All storm water shall be retained in the proposed onsite basin or otherwise onsite and metered out to the City's storm water system in accordance with City Standards, subject to a storm drain plan approved by the City Engineer. The applicant shall submit calculations to the City showing, to the satisfaction of the City Engineer or designee, that the basin proposed onsite has enough capacity for the proposed plans.
22. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
23. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spill over onto adjacent properties.
24. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks as well as the number of containers needed to adequately serve the site. Use of a trash compactor should be considered to reduce the number of pick-ups per week.
25. All construction activity shall be conducted between the hours of 7:00 AM and 7:00 PM, Monday through Saturday, due to nearby residential uses.

26. All walking paths, bicycle paths, recreational areas, and bicycle or vehicle parking areas shall be provided with sufficient lighting to ensure a safe environment.
27. All mechanical equipment shall be screened from public view (details to be worked out with staff).
28. Building and changing grades within the Regulatory Floodway is prohibited. The City shall not approve any plan or proposal that indicates building footprints or changes of grades in the Regulatory Floodway. Prior to construction, the applicant shall cause to be performed a survey of the regulatory floodway that is deemed appropriate by the City Engineer or designee. The project shall also be designed to meet all requirements of Flood Zone "AE."
29. Cross access easement(s) shall be recorded with the parcel to the east to ensure access to the driveway approximately 368 feet east of Highway 59 on Olive Avenue.
30. The design and height of fencing to screen the ponding basin shall be approved by City Planning staff at the time of the issuance of the first building permit.
31. Site Plan Review permits shall be required prior to building permit issuance for all buildings, including canopies, on site. If alcohol sales are proposed at the gas station, a Conditional Use Permit will be required.
32. Cross access and parking easements shall be recorded with any parcel map associated with the project.
33. The project shall improve or cause to be improved the Olive Avenue driveway in accordance with Table A2 of the traffic study (included within the Initial Study found at Attachment E of Planning Commission Staff Report 21-149). To resolve the issue of queues exceeding the driveway throat depth at the Olive Avenue driveway, the project shall install a 75-foot median in driveway OR add a westbound right turn lane on Olive Avenue. To resolve the issue of a right turn deceleration lane conflict with through traffic, the project shall add a westbound right turn lane on Olive Avenue.

Findings and Considerations
Planning Commission Resolution #4060
General Plan Amendment #20-02 and Site Utilization Plan Revision #1
for Planned Development (P-D) #12

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) With the proposed General Plan Amendment and Site Utilization Plan (SUP) Revision, the proposed project will conform with the General Plan designation of Business Park and zoning of Planned Development #12. The SUP Revision includes a gas station with convenience store, a drive-through, and office and retail uses, shown on the Site Plan at Attachment C of Planning Commission Staff Report #21-149.

Traffic/Circulation

- B) According to the traffic study in the Initial Study #20-36 (Attachment E of Planning Commission Staff Report 21-149), the SR 59 / Olive Avenue Commercial Center project is a proposed convenience commercial development that will occupy 3 acres on the northeast corner of the intersection of State Route 59 (SR 59) and Olive Avenue. The proposed development plan includes a gasoline station with convenience store, a fast-food restaurant and other office / retail uses.

Access

The project proposes right-turn only access to SR 59 north of Olive Avenue, as well as a new right-turn only driveway on Olive Avenue.

Trip Generation

Based on approved trip generation rates that account for the specific land uses included in the project, and after discount for “pass-by” trips, the project could be expected to result in 1,811 net new trips (in and out) on a daily basis, with 139 new trips in the a.m. peak hour and 155 new trips in the p.m. peak hour.

Improvements

The project is assumed to complete frontage improvements on SR 59 and Olive Avenue that are consistent with the City’s Arterial Street standards. Work required along SR 59 would be conducted under an encroachment permit acquired through Caltrans.

Existing Setting

The existing system of pedestrian and bicycle facilities in this area include limited sidewalks and Class I bike paths, but pedestrians and cyclists use paved shoulders

elsewhere. Sidewalks do not exist along the project's Olive Avenue frontage, but a Class I trail exists along SR 59. Recent Caltrans improvements have included high visibility crosswalks at the SR 59 and Olive Avenue intersection.

The Local Transportation Analysis (LTA) notes that the City of Merced General Plan establishes Level of Service (LOS) D as the minimum acceptable standard for the operation of intersections and roadways.

Because COVID-19 makes collection of new traffic count data impractical, traffic counts conducted in 2017 were projected out to Year 2020 by a 1% annual increase to established existing conditions. Two safety intersection improvement projects recently completed by the City and Caltrans are assumed in the evaluation of existing conditions at the SR 59 / Olive Avenue intersection and at the SR 59 / W. 16th Street intersection.

All study intersections operate at LOS D or better during the study hours. However, the two-lane portion of SR 59 between W. 16th Street and Olive Avenue carries daily traffic volumes that are indicative of LOS F conditions.

Vehicle Miles Traveled Impacts

Under SB 743, evaluation of transportation impacts under CEQA requires that agencies move from Level of Service based analysis to consideration of a project's effect on regional Vehicle Miles Traveled (VMT). The CEQA Guidelines and the California Governor's Office of Planning and Research (OPR) document, *Technical Advisory on Evaluating Transportation Impacts in CEQA* (California Governor's Office of Planning and Research 2018) provide general guidance as to thresholds of significance for determining when a project would have significant transportation impacts based on the new metric of VMT, rather than operating Level of Service (LOS) until local agencies adopt their own standards. Because Merced County and the City of Merced have not yet adopted methods for estimating regional VMT or significance criteria for evaluating impacts based on VMT, the OPR technical advisory has been followed.

Assessment of VMT Impacts

The proposed project is generally comprised of convenience retail uses that will serve motorists already traveling on SR 59 and on Olive Avenue or who live or work in the immediate area. The project also includes up to 6,000 sf of office space. Based on OPR guidance, the project's VMT impacts can be judged as follows.

As the retail elements of the project would serve customers generated in the local area or simply stopping at the site as part of a trip on SR 59 or on Olive Avenue, and the project's total building floor area is far below the 50,000 sf threshold identified by OPR, the impacts of the project's retail uses on regional VMT is not significant.

The office space included in the project is projected to generate 74 daily trips. As this trip generation estimate falls below the 110 daily trips threshold identified by OPR,

the office portion of the proposed project qualifies as a “small project” that can be assumed to have a less than significant impact on regional VMT. According to the traffic study, impacts to pedestrian, bicycles, hazards and safety, state facilities, and transit are also considered not significant.

LOS Results

While not a CEQA issue, the relative effects of the project on short term and long term traffic operations in this area of Merced has been investigated in a manner that is consistent with recent analysis of other development projects. Operating Levels of Service have been identified, and improvements that would be needed with and without the project to satisfy General Plan policies have been identified. Table A2 of Attachment E of Planning Commission Staff Report 21-149 notes these recommended improvements.

Three of these recommended improvements relate directly to modification of SR 59, or the intersection of SR 59 with Olive Avenue. Because the City and Caltrans will be implementing a project to widen SR 59 from 16th Street to the Black Rascal Creek bridges, these recommendations are not recommended by the City to be required as Conditions of Approval. This widening will both improve some of the issues and will also heavily modify the conditions that the analysis is predicated on in the first place. Additionally, any improvements that the proposed project would install in the short term would be rendered obsolete or removed when the widening occurs. As such, these three impacts do not require improvements from the project:

- SR 59/Olive Avenue- Lengthening of peak period queues
- SR 59/Olive Avenue/Santa Fe Drive- Exacerbate LOS F conditions during AM and PM peak hours
- SR 59 Driveway- Right turn deceleration conflict with through traffic

The traffic study also notes two impacts at the Olive Avenue driveway of the project:

- Queues exceed driveway throat depth
- Right turn deceleration lane conflict with through traffic

Driveway Throat Depths The driveway throat is the area available for exiting vehicles to wait without blocking the path of arriving traffic. The adequacy of the driveway throat is determined based on the length of exiting queue at the driveway. The LOS analysis indicates that the 95th percentile queue in the SR 59 driveway would be one vehicle or less, while the 95th percentile queue in the Olive Avenue driveway could be 75 feet (i.e., three vehicles). Table T19 of Attachment E of Planning Commission Staff Report 21-149 compares forecast queue and available throat depth. As shown, under Year 2035 conditions, the forecast 95th percentile queues at the SR 59 driveway are less than the available throat depth, and no changes are recommended. However, the Olive Avenue driveway has a limited throat depth, and the anticipated Year 2035 queue would block entry into the southern portion of

the canopy area. To address this issue, it would be necessary to either:

1. Place a median in the driveway that would extend for 75 feet, **or**
2. Construct a westbound right turn lane on Olive Avenue at the site access to provide space outside of the through travel lane for any entering vehicles delayed by the exiting queue.

Right Turn Channelization at Entrances. The need for separate right turn lanes on the entries to project driveways has been considered within the context of the precedence under similar condition elsewhere in Merced and typical engineering practice. The volume of traffic entering the site at each driveway has been identified. The Olive Avenue driveway is projected to handle 70 to 74 inbound peak hour right turns. The number of turns reaches the level that would typically justify a separate right turn deceleration lane (i.e., more than 50 right turns).

Right turn treatments elsewhere have been reviewed. Access to Olive Avenue is limited, and separate right turn lanes have been provided elsewhere on Olive Avenue east of the project site, particularly at access to major commercial areas. However, the industrial driveways just east of the project do not have right turn lanes.

In this case, separate right turn lanes are desirable and are needed to provide adequate LOS under long term conditions. A turn lane should be provided but should be incorporated into the ultimate design of the area street system. Initially, a separate right turn lane can be provided on Olive Avenue in advance of the driveway in the remaining 120 feet of project frontage. The project should contribute its fair share to the cost of these improvements, and with this improvement the project's effect is consistent with the General Plan.

Conclusion

Transportation and traffic impacts as summarized above were analyzed by KD Anderson & Associates, Inc. in a Traffic Impact Analysis (Appendix B of Initial Study #20-36, Attachment E of Planning Commission Staff Report 21-149). The conclusions regarding the proposed project is that the impacts of the project are **less than significant** for the purposes of CEQA Impact Significance Criteria.

The project's Conditions of Approval related to Level of Service (LOS) improvements shall indicate the need for improvement to rectify the impacts along the Olive Avenue Driveway as noted above and in Table A2 of Attachment E of Planning Commission Staff Report 21-149:

Olive Avenue Driveway

- Queues exceed driveway throat depth
 - Install 75-foot median in driveway OR add a westbound right turn lane
- Right turn deceleration lane conflict with through traffic
 - Add westbound right turn lane

Parking

- C) Parking is based on project uses and their requirements per Table 20.38-1 of the Zoning Ordinance. The Zoning Ordinance allows a 15% reduction in floor area for non-usable commercial space such as restrooms, storage areas, etc. Using this formula, the parking requirements for the project would be 46 spaces, assuming that all areas are built out using the general retail requirements. If a portion of the project develops as office, the standards are slightly reduced, depending on the square footage committed to office use. The proposed project provides 85 parking spaces, which exceeds the required amount of parking necessary for this project even under the more demanding requirements of the general retail use.

Public Improvements/City Services

- D) Water

There is a 16-inch water line in Highway 59 and another 16-inch line in Olive Avenue to serve the project site. The City's water supply would be sufficient to serve the proposed project.

Sewer

The WWTP recently finished two major upgrades (Phase IV and Phase V) to improve the quality of the treated water, referred to as plant effluent, and to improve the quality of biosolids and methods of treatment. The Merced Wastewater Treatment Plant is now one of the most advanced facilities in the state. It is capable of treating up to 12 million gallons of influent a day. The proposed project is estimated to generate approximately 11,730 gallons of wastewater per day (based on 108 gallons/day/1,000 square feet of floor area for office and commercial uses). The additional wastewater generated by the project would be approximately 0.09% of the overall capacity of the WWTP.

There is sufficient capacity at the WWTP, and the existing lines in Highway 59 and Olive Avenue have enough capacity during peak hours to accommodate the additional wastewater and transmit it to the WWTP for processing.

Stormwater

Storm drain lines exist in Olive Avenue and Highway 59 that the on-site storm drainage system would connect to. The project site would consist of approximately 101,280 square feet of impervious surfaces. All storm water run-off would be required to be captured on-site and metered into the City's storm drainage per City Standards.

Building Design

- E) As shown on the Exterior Elevations at Attachment D of Planning Commission Staff Report #21-149, the buildings on the site would stand one story tall and have a design with brick, plaster, metal, and glass as primary features and elements. The details of the convenience mart are similar to other existing convenience marts in the area,

using the branding of 7-Eleven, the proposed tenant. Final design details are to be addressed by staff at the Site Plan Review stage.

Site Design

- F) The project site is bounded by State Highway 59 to the west, Olive Avenue to the south, commercial warehouses and a cannabis dispensary to the east, and the vacant remainder of the property which the subject site was split off from to the north. As proposed, the project site includes:
- 4,837 square feet for a proposed office/retail building
 - 4,088 square feet for a proposed mini mart
 - 4,284 square feet for the fuel island and canopy
 - 2,805 square feet for a proposed drive-through business

Landscaping

- G) As shown on the Site Plan at Attachment C of Planning Commission Staff Report #21-149, parking lot trees would be provided throughout the site in compliance with the City's Parking Lot Landscape Standards (Condition #15). According to Table 20.36-1 of the Zoning Ordinance, the site is required to provide a minimum landscape area equal to 15% of the project site. Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance (Condition #19).

Neighborhood Impact/Interface

- H) The site as it currently stands does not directly border, nor does it border across an adjacent roadway, a residential use. Public hearing notices were sent to all property owners within 300 feet of the parcel that the subject site was recently subdivided from. To date, staff has not had any comments from the public regarding the project.

Signage

- I) All signs on the site would be required to comply with the North Merced Sign Ordinance and the Business Park sign regulations (Condition #9). Final sign/design details will be addressed by staff at the Site Plan Review phase. The sign locations as shown on the Site Plan at Attachment C of Planning Commission Staff Report #21-149 are not approved, including the monument sign located on Highway 59 within Caltrans' right-of-way, which cannot be approved.

Planned Developments- Required Findings

- J) Section 20.20.020(J) of the Merced Municipal Code requires the following findings be made in order to approve a Revision to a Planned Development.
1. The proposed development is consistent with the goals, policies, and actions of the General Plan and any applicable specific plan and community plan.

- The proposed development is consistent with and/or advances a number of goals of the General Plan, specifically UE-1.2, UE-1.5, L-2.1, L-2.2, L-2.4, L-2.5, L-3.2, and T-2.6.
2. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.
 - The Site Plan is shown at Attachment B of Planning Commission Staff Report #21-149 and lays out a clear and feasible plan to use this site for the proposed land uses.
 3. The site for the proposed development has adequate access considering the limitations of existing and planned streets and highways.
 - Traffic and circulation are discussed in detail in Finding B, above.
 4. Adequate public services exist or will be provided to serve the proposed development.
 - Public Improvements and City Services are discussed in detail in Finding D, above.
 5. The proposed development will not have a substantial adverse effect on surrounding property, will be compatible with the existing and planned land use character of the surrounding area, and will enhance the desirability of the area and have a beneficial effect.
 - The land use that the surrounding properties predominantly have is Industrial. With warehouses and a cannabis dispensary to the east, a Wal-Mart across Olive Avenue, and a proposed development of similar character in the Thoroughfare Commercial parcels across Highway 59, this development will fit in appropriately and enhance the desirability of the area.
 6. The proposed development carries out the intent of the Planned Development zoning district by providing a more efficient use of the land and an excellence of site design greater than that which could be achieved through the application of established zoning standards.
 - Planned Development #12 is already in existence, and this proposal allows a development to move forward within it in a manner that the established zoning standards would not permit. The Commercial Office (C-O) zone would not permit a gas and service station, which can be a cornerstone of a development in such a highly travelled intersection, to exist on this location.
 7. Each individual unit of the proposed development, in each phase as well as the total development, can exist as an independent unit capable of creating a good environment in the locality and being in any stage as desirable and stable as the total development.
 - None of the proposed uses are wholly reliant on any of the others in order to exist. While each of the uses can benefit from the presence of the entire development, no single one of the proposed uses is a requirement for the whole to proceed.
 8. Any deviation from the standard ordinance requirements is warranted by the design and additional amenities incorporated in the development plan, which

EXHIBIT B
OF PLANNING COMMISSION RESOLUTION #4060

offer certain unusual redeeming features to compensate for any deviations that may be permitted.

- The proposed Site Utilization Plan Revision does not envision or recommend deviations for standard ordinance requirements beyond that which was created for Planned Development #12. At that time, the subject site was a component of a larger overall parcel and permits at the time were primarily concerned with the warehouses now in existence to the east.
9. The principles incorporated in the proposed development plan indicate certain unique or unusual features, which could not otherwise be achieved under the other zoning districts.
- The proposed development plan uniquely addresses the needs and characteristics of the subject site, which is already zoned as a part of Planned Development #12. In accordance with the purpose of the Planned Development designation, this plan proposes to bring together uses that would not otherwise be possible with a different zoning district while still promoting the project's overall harmoniousness with surrounding uses.

Environmental Clearance

- K) The Planning staff has conducted an environmental review (Initial Study #20-36) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case because of the mitigation measures and/or modifications described in Initial Study #20-36) is being recommended (see Attachment E of Planning Commission Staff Report #21-149).

ENVIRONMENTAL REVIEW #20-36 Mitigation Monitoring Program
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MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own “Mitigation Monitoring and Reporting Program” (MMC 19.28). The City’s program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor’s Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- 1) The requirements of the adopted mitigation monitoring program for the General Plan Amendment #20-02 and Site Utilization Plan Revision #1 to Planned Development #12 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City’s construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

ATTACHMENT B

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #20-36 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for General Plan Amendment #20-02 and Site Utilization Plan Revision #1 to Planned Development #12. The columns within the tables are defined as follows:

Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Agency/Department Consultation:	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation measure.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

**General Plan Amendment #20-36/Site Utilization Plan Revision #1 to Planned Development #12
Mitigation Monitoring Checklist**

Project Name: _____ **File Number:** _____
Approval Date: _____ **Project Location** _____
Brief Project Description _____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

3) Air Quality				
<i>Impact</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>c</i>	AIR-1) Consistent with SJVAPCD Regulation VIII (Fugitive PM10 Prohibitions), the following controls are required to be included as specifications for the proposed project and implemented at the construction site: -All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover. -All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant -All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking. -When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained. -All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. <i>(continued on next page)</i>			

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>c</i>	-The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden. - Following the addition of materials to, or the removal of materials from, the surface of out-door storage piles, said piles shall be effectively stabilized of fugitive dust emission utilizing sufficient water or chemical stabilizer/suppressant.	Building Permits	Planning Department	
<i>c</i>	AIR-2) The project contractor shall ensure all off-road diesel-powered construction equipment of 50 horsepower or more used for the project meet the California Air Resources Board (CARB) Tier 2 with a Level 3 Diesel Particulate Filter emissions standards or equivalent.	Building Permits	Planning Department	

4) Biological Resources				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	BIO-1) Impacts to wildlife habitat can be reduced by using native plant materials in landscaping to the greatest extent possible. Native plant species provide the best wildlife habitat since native vegetation has co-evolved with the wildlife and affords food sources for which wildlife is best adapted. Native species cannot always be used to produce the desired form and floral characteristics, but some native species can usually be incorporated.	Building Permits	Planning Department	

5) Cultural Resources				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	CUL-1) If unknown pre-contact or historic-period archaeological materials are encountered during project activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations. Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist determines that the discovery represents a potentially significant cultural resource, additional investigations shall be required to mitigate adverse impacts from project implementation. These additional studies may include, but are not limited to, recordation, archaeological excavation, or other forms of significance evaluations. The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive in the appropriate contract documents: <i>(continued on next page)</i>			

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	“The subsurface of the construction site is sensitive for archaeological deposits. If archaeological deposits are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified archaeologist shall assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any archaeological materials. Archaeological deposits can include, but are not limited to, shellfish remains; bones, including human remains; and tools made from, obsidian, chert, and basalt; mortars and pestles; historical trash deposits containing glass, ceramics, and metal artifacts; and structural remains, including foundations and wells.” The City shall verify that the language has been included in the grading plans prior to issuance of a grading permit or other permitted project action that includes ground-disturbing activities on the project site.	Building Permits	Planning Department	
<i>b</i>	CUL-2) Implementation of Mitigation Measure CUL-1	Building Permits	Planning Department	

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>c</i>	CUL-3) If human remains are identified during construction and cannot be preserved in place, the applicant shall fund: 1) the removal and documentation of the human remains from the project corridor by a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology; 2) the scientific analysis of the remains by a qualified archaeologist, should such analysis be permitted by the Native American Most Likely Descendant; and, 3) the reburial of the remains, as appropriate. All excavation, analysis, and reburial of Native American human remains shall be done in consultation with the Native American Most Likely Descendant, as identified by the California Native American Heritage Commission.	Building Permits	Planning Department	
6) Energy				
<i>a</i>	ENE-1) The applicant shall comply with all applicable California Energy Code, AB 341, and San Joaquin Valley Air Pollution Control District rules and regulations regulating energy efficiency and waste.	Building Permits	Building Department	
<i>b</i>	ENE-2) Implementation of Mitigation Measure ENE-1.	Building Permits	Building Department	

7) Geology and Soils				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>b</i>	GEO-1) The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.	Building/ Encroachment Permits	Engineering Department	
8) Greenhouse Gas Emissions				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	GHG-1) The project applicant shall demonstrate compliance with the applicable BPS strategies to the Planning Division prior to the issuance of a building permit. The following BPS strategies are considered to be applicable, feasible, and effective in reducing GHG emissions generated by the project: • The project applicant shall provide a pedestrian access network that internally links all uses and connects to existing external streets and pedestrian facilities. <i>(continued on next page)</i>			

<i>a</i>	• The project applicant shall ensure site design and building placement minimize barriers to pedestrian access and interconnectivity. Physical barriers such as walls, berms, landscaping, and slopes between nonresidential uses that impede bicycle or pedestrian circulation shall be eliminated. In addition, barriers to pedestrian access of neighboring facilities and sites shall be minimized. • The project applicant shall design roadways to reduce motor vehicle speeds and encourage pedestrian and bicycle trips by featuring traffic calming measures. Traffic calming measures include: bike lanes, center islands, closures (cul-de-sacs), diverters, education, forced turn lanes, and roundabouts. • The project shall provide car sharing programs, accommodations such as parking spaces for the car share vehicles at convenient locations accessible by public transportation. • The project applicant shall plant trees to provide shade. • The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.	Prior to Issuance of Building Permit	Engineering/Building/ Planning Departments	
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8) Hydrology and Water Quality				
a, c	HYDRO-1) To minimize any potential short-term water quality effects from project-related construction activities, the project contractor shall implement Best Management Practices (BMPs) in conformance with the California Storm Water Best Management Practice Handbook for Construction Activity. In addition, the proposed project shall be in compliance with existing regulatory requirements, including the Water Pollution Control Preparation (WPCP) Manual. In addition, implementation of a Storm Water Pollution Prevention Plan (SWPPP) would be required under the National Pollutant Discharge Elimination System (NPDES) to regulate water quality associated with construction activities.	Building/ Encroachment Permits	Engineering Department	

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	HYDRO-2 If any storm drainage from the site is to drain into MID facilities, the developer shall first enter into a “Storm Drainage Agreement” with MID and pay all applicable fees.	Building/ Encroachment Permits	Engineering Department	
<i>a</i>	HYDRO-3A) Prior to the issuance of building permits, the project applicant shall submit a final Storm Water Mitigation Plan (SWMP) to the City of Merced for review and approval. The plan shall be developed using the California Stormwater Quality Association’s “New Development and Redevelopment Handbook.” The SWMP shall identify pollution prevention measures and BMPs necessary to control stormwater pollution from operational activities and facilities, and provide for appropriate maintenance over time. The SWMP shall include design concepts that are intended to accomplish a “first flush” objective that would remove contaminants from the first 2 inches of stormwater before it enters area waterways. The project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.	Prior to Issuance of Building Permits	Engineering Department	

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	HYDRO-3B) Prior to issuance of a building permit or as required by the City Engineer, the developer shall demonstrate to the City that storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City Standards and the City's Storm Drain Master Plan. Prior to the issuance of grading permits, the project applicant shall file a Notice of Intent with and obtain a facility identification number from the State Water Resources Control Board. The project applicant shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements: <i>(continued on next page)</i>	Building/ Encroachment Permits	Engineering Department	

<i>a</i>	• Comply with the requirements of the State of California's most current Construction Stormwater Permit. • Temporary erosion control measures shall be implemented on all disturbed areas. • Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season. • Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs. • The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains. • BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the Central Valley Regional Water Quality Control Board to determine adequacy of the measure. • In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season. <i>(continued on next page)</i>			
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	Specifically, the SWPPP shall identify and describe source control measures, treatment controls, and BMP maintenance requirements to ensure that the project complies with post-construction stormwater management requirements of the RWQCB.			
<i>c</i>	HYDRO-4 Prior to issuance of a building permit or as required by the City Engineer, the developer shall demonstrate to the City that storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City Standards and the City's Storm Drain Master Plan.	Prior to Issuance of Building Permit	Engineering	
<i>c</i>	HYDRO-5 Building and changing grades within the Regulatory Floodway is prohibited. The City shall not approve any plan or proposal that indicates building footprints or changes of grades in the Regulatory Floodway. Prior to construction, the applicant shall cause to be performed a survey of the regulatory floodway that is deemed appropriate by the City Engineer or their designee. The project shall also be designed to meet all requirements of Flood Zone "AE."	Prior to Site Plan Approval	Engineering	

13) Noise					
<i>Impact No.</i>	<i>Mitigation Measures</i>		<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	NOI-1)	To reduce potential construction noise impacts, the following multi-part mitigation measure shall be implemented for the project: • The construction contractor shall ensure that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment. • The construction contractor shall locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction disturbance area. In addition, the project contractor shall place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site. • The construction contractor shall prohibit unnecessary idling of internal combustion engines (i.e., idling in excess of 5 minutes is prohibited). • The construction contractor shall locate, to the maximum extent practical, on-site equipment staging areas so as to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. <i>(continued on next page)</i>	Building Permit	Building Department	

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	• The construction contractor shall limit all noise producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Building Permit	Planning Department	

Certificate of Completion:

By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion*.

Environmental Coordinator

Date

CITY OF MERCED
Planning Commission

Resolution #4061

WHEREAS, the Merced City Planning Commission at its regular meeting of March 17, 2021, held a public hearing via teleconference and considered **Zoning Ordinance Amendment #21-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Sections 20.74 (Appeals), 20.44.170 (Commercial Cannabis Businesses), 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice and Hearings). This amendment would clarify that appeals of actions by the Planning Commission, Site Plan Review Committee, and the Director of Development Services would be scheduled for a public hearing by the appropriate review authority and heard within 90 days unless otherwise mutually agreed to by the applicant and appellant; and modify the appeal procedures for Commercial Cannabis Business Permits to match the same language (the current requirement is 30 days). This amendment would also clarify that any action of the Planning Commission requires a vote of at least four members of the Planning Commission for all actions listed in Table 20.64-1 (Review and Decision-Making Authority), including Conditional Use Permits and other permits, approvals, and recommendations; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through F of Staff Report #21-205 (Exhibit A); and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #21-03, and approval of Zoning Ordinance Amendment #21-01, as outlined in Exhibit B and subject to the Findings set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Camper, seconded by Commissioner Delgadillo, and carried by the following vote:

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

NOES: None

ABSENT: Commissioners Dylina (one vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4061

Page 2

March 17, 2021

Adopted this 17th day of March 2021

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Kim Espinosa

Secretary

Exhibits:

Exhibit A –Findings/Considerations

Exhibit B—Draft Ordinance

Findings and Considerations
Planning Commission Resolution #4061
Zoning Ordinance Amendment #21-01

FINDINGS/CONSIDERATIONS:

General Plan Policies Related to This Application

- A) The proposed zoning ordinance amendment would make changes to the timing of appeals and clarify the number of votes required to adopt Planning Commission actions. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

Proposed Changes to Zoning Ordinance

- B) The proposed changes to the Zoning Ordinance as outlined in the Findings below. The changes are contained in the Draft Ordinance at Exhibit B of Planning Commission Resolution #4061 (Attachment A) and presented in the modified Chapters at Attachments B through F of Staff Report #21-205. In general, the changes can be summarized as follows:
- 1) Amending the language regarding appeals for items that go to the Planning Commission to be consistent throughout the Zoning Ordinance, in particular Chapter 20.74 (Appeals) and Section 20.44.170 (Commercial Cannabis Businesses). All appeals will be required to be scheduled and heard within 90 days, unless mutually agreed to by the applicant and appellant.
 - 2) Clarifying the language in Chapters 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice and Hearings) to make it clear that it requires 4 votes of the Planning Commission members to approve an action; otherwise, it is deemed denied.

Proposed Changes to the Code Regarding Appeals

- C) In the past, there has been some confusion regarding the timing of appeals in that the language in the Zoning Ordinance only referred to “scheduling” the item for a public hearing. It was not clear if that meant the item must be heard within that time frame or not. It also was not clear if the applicant and/or the appellant could agree to a longer time frame.

The following changes to Chapter 20.74 (Appeals) and Section 20.44.170 (Commercial Cannabis Businesses) are proposed in the Draft Ordinance at Exhibit B of Planning Commission Resolution #4061 (Attachment A) and presented in the modified Chapters at Attachments B through C of Staff Report #21-205:

- 1) Section 20.74.030(E)(1) “Filing and Processing of Appeals, Report and Noticed Hearing” would be changed to read as follows: *“When an appeal has been filed, the Development Services Department shall prepare a report on the matter, including all of the application materials in question, and schedule and hear the matter for a public hearing by the appropriate review*

authority within 90 calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant.

- 2) Section 20.44.170(L)(4)(b) "Appeal of Denial of Commercial Cannabis Business Permit (All Types)" would be changed to read as follows: *"When an appeal has been filed, the matter shall be scheduled and heard for a public hearing before the City Council within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant."*
- 3) Section 20.44.170(L)(6)(b)(i) "Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)" would be changed to read as follows: *"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. When an appeal has been filed, the matter shall be scheduled and heard for a public hearing before the Planning Commission within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant."*
- 4) Section 20.44.170(L)(6)(b)(vi)(b) "Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)" would be changed to read as follows: *"The decision of the Planning Commission may be appealed to the City Council. A written appeal shall be filed within five (5) business days (excluding official City holidays) following a Planning Commission decision. When an appeal has been filed, the matter shall be scheduled and heard for a public hearing before the City Council within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant."*
- 5) Section 20.44.170(L)(8)(c)(i) "Revocation of Commercial Cannabis Business Permit (All Types)" would be changed to read as follows: *"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. When an appeal has been filed, the matter shall be scheduled and heard for a public hearing before the Planning Commission within ~~(thirty) 30~~ ninety (90) days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant."*
- 6) Section 20.44.170(L)(8)(c)(vi)(b) "Revocation of Commercial Cannabis Business Permit (All Types)" would be changed to read as follows: *"The decision of the Planning Commission may be appealed to the City Council. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision. When an appeal has been filed, the matter shall be scheduled and heard for a public hearing before the City Council within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant."*

Proposed Changes Related to the Number of Votes Needed to Approve Actions

- D) City staff recently noticed that the Zoning Ordinance was not clear on how many votes it took for the Planning Commission to approve an item. (Such information for the City Council is included in the City's Charter, but it is unclear about how it applies to the Planning Commission.) Therefore, staff is proposing to amend the Ordinance in order to make it clear that it takes four (4) votes of the Planning Commission members to approve an item.

The following changes to Chapters 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice and Hearings) are proposed in the Draft Ordinance at Exhibit B of Planning Commission Resolution #4061 (Attachment A) and presented in the modified Chapters at Attachments D through F of Staff Report #21-205:

- 1) Section 20.64.040 "Administrative Responsibility, Planning Commission" of is proposed to be changed to read as follows:
"The role of the Planning Commission in the administration of the Zoning Ordinance includes:
 - A) *Serving as the review authority on permit and approval applications as shown in Table 20.64-1;*
 - B) *Reviewing appeals filed from Site Plan Review Committee decisions on Site Plan Review permit applications;*
 - C) *Reviewing appeals filed from Development Services Director decisions on discretionary permit applications; and,*
 - D) *Providing recommendations to the City Council on legislative actions as shown in Table 20.64-1.; and,*
 - E) *All decisions or recommendations of the Planning Commission noted above shall require at least four (4) members of the Planning Commission to vote to approve such an action; otherwise, the action is deemed denied.*
- 2) Section 20.68.020(C)(1) "Permit Requirements, Conditional Use and Minor Use Permits, Review Authority" would be changed to read as follows:
*"**Conditional Use Permits.** The Planning Commission shall take action on all Conditional Use Permit applications. At least four (4) members of the Planning Commission shall be required to vote to approve a Conditional Use Permit; otherwise, the Permit is deemed denied."*
- 3) Section 20.68.030(C)(1) "Design Review Permit, Review Authority" would be changed to read as follows: *"**Planning Commission.** The Planning Commission shall take action on all Design Review Permit applications except as specified in Sections 2 and 3 below. At least four (4) members of the Planning Commission shall be required to vote to approve a Design Review Permit; otherwise, the Permit is deemed denied."*
- 4) Section 20.68.070(C) "Variance" would be changed to read as follows: *"**Review Authority.** The Planning Commission, acting as the Board of Zoning Adjustment, shall take action on all Variance applications. At least*

four (4) members of the Planning Commission shall be required to vote to approve a Variance; otherwise, the Variance is deemed denied.”

- 5) Section 20.74.050 would be changed to read as follows:

“20.74.050 Decision or Recommendation by Planning Commission

A. After a public hearing, any decision of the Planning Commission shall require at least four (4) members of the Planning Commission to vote to approve an action; otherwise, the action is deemed denied.

B. After a public hearing resulting in a Planning Commission recommendation to the City Council, the Development Services Department shall forward the recommendation to the City Council. A copy of the recommendation shall be mailed to the applicant at the address shown on the application. If at least four members of the Planning Commission do not vote to recommend approval or denial, then that action shall be deemed a recommendation of denial.”

Time Frames

- E) If recommended for approval by the Planning Commission on March 17, 2021, the Ordinance revisions would be scheduled for a City Council public hearing on May 3, 2021. A 2nd reading and adoption would follow on May 17, 2021, with the Ordinance being effective 30 days later or on or about June 17, 2021.

Environmental Clearance

- F) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a *Categorical Exemption* is being recommended (see Attachment G of Staff Report #21-205).

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING SECTIONS 20.74 (APPEALS),
20.44.170 (COMMERCIAL CANNABIS
BUSINESSES), 20.64 (ADMINISTRATIVE
RESPONSIBILITY), 20.68 (PERMIT
REQUIREMENTS), AND 20.70 (PUBLIC NOTICE
AND HEARINGS) OF THE MERCED MUNICIPAL
CODE REGARDING THE TIMING OF APPEALS
AND THE NUMBER OF VOTES REQUIRED TO
ADOPT PLANNING COMMISSION ACTIONS**

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

SECTION 1. AMENDMENT TO CODE. Section 20.74.030(E)(1) “Filing and Processing of Appeals, Report and Noticed Hearing,” of the Merced Municipal Code is hereby amended to read as follows:

“E. Report and Noticed Hearing

1. When an appeal has been filed, the Development Services Department shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate review authority. Said public hearing should be heard within 90 ~~calendar~~ days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued by the appropriate review authority pursuant to 20.74.030(F)(3).”

SECTION 2. AMENDMENT TO CODE. Section 20.44.170(L)(4)(b) “Appeal of Denial of Commercial Cannabis Business Permit (All Types),” of the Merced Municipal Code is hereby amended to read as follows:

- “b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(4)(d).”

SECTION 3. AMENDMENT TO CODE. Section 20.44.170(L)(6)(b)(i) "Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)," of the Merced Municipal Code is hereby amended to read as follows:

- "b. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.
 - i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(v)."

SECTION 4. AMENDMENT TO CODE. Section 20.44.170(L)(6)(b)(vi)(b) "Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)," of the Merced Municipal Code is hereby amended to read as follows:

- "vi. The decision of the Planning Commission may be appealed to the City Council.
 - a) A written appeal shall be filed within five (5) business days (excluding official City holidays) following a Planning Commission decision.
 - b) When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(vi)(e)."

SECTION 5. AMENDMENT TO CODE. Section 20.44.170(L)(8)(c)(i) "Revocation of Commercial Cannabis Business Permit (All Types)," of the Merced Municipal Code is hereby amended to read as follows:

- "c. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5)

business days (excluding official city holidays) following a decision by the Director of Development Services.

- i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ~~(thirty)~~ 30 ninety (90) days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(v).”

SECTION 6. AMENDMENT TO CODE. Section 20.44.170(L)(8)(c)(vi)(b) “Revocation of Commercial Cannabis Business Permit (All Types),” of the Merced Municipal Code is hereby amended to read as follows:

- vi. The decision of the Planning Commission may be appealed to the City Council.
 - a) A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.
 - b) When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(vi)(e).”

SECTION 7. AMENDMENT TO CODE. Section 20.64.040 “Administrative Responsibility, Planning Commission,” of the Merced Municipal Code is hereby amended to read as follows:

“The role of the Planning Commission in the administration of the Zoning Ordinance includes:

- A. Serving as the review authority on permit and approval applications as shown in Table 20.64-1;
- B. Reviewing appeals filed from Site Plan Review Committee decisions on Site Plan Review permit applications;
- C. Reviewing appeals filed from Development Services Director decisions on discretionary permit applications; ~~and~~;

- D. Providing recommendations to the City Council on legislative actions as shown in Table 20.64-1 and,
- E. All decisions or recommendations of the Planning Commission noted above shall require at least four (4) members of the Planning Commission to vote to approve such an action; otherwise, the action is deemed denied."

SECTION 8. AMENDMENT TO CODE. Section 20.68.020(C)(1) "Permit Requirements, Conditional Use and Minor Use Permits, Review Authority," of the Merced Municipal Code is hereby amended to read as follows:

- "1. **Conditional Use Permits.** The Planning Commission shall take action on all Conditional Use Permit applications. At least four (4) members of the Planning Commission shall be required to vote to approve a Conditional Use Permit; otherwise, the Permit is deemed denied."

SECTION 9. AMENDMENT TO CODE. Section 20.68.030(C)(1) "Design Review Permit, Review Authority" of the Merced Municipal Code is hereby amended to read as follows:

- "1. **Planning Commission.** The Planning Commission shall take action on all Design Review Permit applications except as specified in Sections 2 and 3 below. At least four (4) members of the Planning Commission shall be required to vote to approve a Design Review Permit; otherwise, the Permit is deemed denied."

SECTION 10. AMENDMENT TO CODE. Section 20.68.070(C) "Variance," of the Merced Municipal Code is hereby amended to read as follows:

- "C. **Review Authority.** The Planning Commission, acting as the Board of Zoning Adjustment, shall take action on all Variance applications. At least four (4) members of the Planning Commission shall be required to vote to approve a Variance; otherwise, the Variance is deemed denied."

SECTION 11. AMENDMENT TO CODE. Section 20.74.050 "Recommendation by Planning Commission," of the Merced Municipal Code is hereby amended to read as follows:

“20.74.050 Decision or Recommendation by Planning Commission

A. After a public hearing, any decision of the Planning Commission shall require at least four (4) members of the Planning Commission to vote to approve an action; otherwise, the action is deemed denied.

B. After a public hearing resulting in a Planning Commission recommendation to the City Council, the Development Services Department shall forward the recommendation to the City Council. A copy of the recommendation shall be mailed to the applicant at the address shown on the application. If at least four members of the Planning Commission do not vote to recommend approval or denial, then that action shall be deemed a recommendation of denial.”

SECTION 12. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 13. 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 14. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

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

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

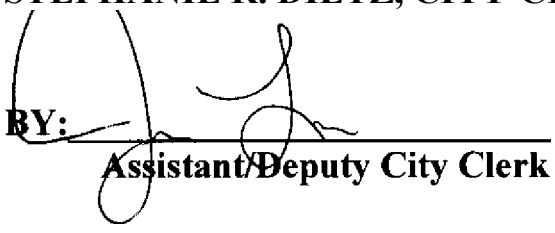
APPROVED:

Mayor

ATTEST:

STEPHANIE R. DIETZ, CITY CLERK

BY:


Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:


City Attorney

8-7-19
Date

[https://cityofmerced-my.sharepoint.com/personal/espinosak_cityofmerced_org/Documents/Documents/KIM/PROJECTS/2021/ZOA 21-01--Procedures/#4061 Exhibit B for ZOA#21-01 \(Draft Ord\).docx](https://cityofmerced-my.sharepoint.com/personal/espinosak_cityofmerced_org/Documents/Documents/KIM/PROJECTS/2021/ZOA%2021-01--Procedures/#4061%20Exhibit%20B%20for%20ZOA#21-01%20(Draft%20Ord).docx)