

CITY OF MERCED
Planning Commission

Resolution #4135

WHEREAS, the Merced City Planning Commission at its regular meeting of May 8, 2024, held a public hearing and considered **Commercial Cannabis Business Permits #24-01 and #24-02**, initiated by Oktay Senvardarli (Oak Senvar) and Muhamed Almutarreb for Moak, Inc., on behalf of Moak, Inc., property owners. This application is to permit to manufacture and distribute cannabis-based products at 847 Beechcraft Avenue using a 43,045-square-foot vacant lot. The property is zoned Light Industrial (I-L), with a General Plan designation of Manufacturing Industrial (IND); also known as Assessor's Parcel Number (APN) 059-640-027; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through K (Exhibit B) of Staff Report #24-384; 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 adopt a Categorical Exemption regarding Environmental Review #24-06 and approve Commercial Cannabis Business Permits #24-01 and #24-02, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner_____, seconded by Commissioner_____, and carried by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PLANNING COMMISSION RESOLUTION #4135

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May 8, 2024

Adopted this 8th day of May, 2024

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Findings and Considerations

Conditions of Approval
Planning Commission Resolution #4135
Commercial Cannabis Business Permits #24-01 and #24-02

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibit 2 (floor plan), and Exhibit 3 (Elevations)-Attachments C, D, and E of Staff Report #24-384, and all other application materials submitted by the applicant, including business plans, security plans, etc., except as modified by the conditions.
2. All conditions and requirements contained in Merced Municipal Code Section 20.44.170, “Regulation of Commercial Cannabis Activities—Commercial Cannabis Business Permit Required” shall apply.
3. 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. 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.

4. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
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. State Law shall prevail in regard to cannabis activities as permitted by State Law.
6. The proposed project shall comply with all applicable regulations of the State of California including, but not limited to, those found in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), as it may be amended or updated from time to time.
7. The proposed project shall provide that all manufacturing and distribution activities occur indoors within a fully enclosed and secure structure, and ensure that the property on which the structure sits is secure and appropriately screened from public view. The details of the property's fencing, security, and screening are to meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
8. The proposed buildings shall comply with all adopted building and fire codes and their amendments.
9. The applicant shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment H of Staff Report #24-384) at the time of submittal for building permits for tenant improvements.
10. The applicants shall keep on the premises of the proposed project site a physical copy of the approved plans, to be annotated and updated

accordingly with any notes, changes, or requirements determined to be necessary by representatives of the City of Merced or any contractors that the City of Merced may employ for the purpose of site inspections. These plans shall be made available to the City's representatives, employees, agents, inspectors, or contractors upon request.

11. The facility operated by the applicants shall be secured from intentional or accidental access by any person not employed, contracted, or otherwise authorized on the premises, including any tenants of other buildings on the same property.
12. Fire sprinklers shall be installed to accommodate the building configuration and process configuration prior to occupancy.
13. Regulatory Fees, as per the most recent Fee Schedule published by the City, are to be paid prior to the issuance of a Certificate of Occupancy and annually thereafter on or before the anniversary date of the business opening. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually to account for inflation by using the Consumer Price Index (CPI). In no event, shall the fees in any year be less than the preceding year.
14. Prior to issuance of a Certificate of Occupancy, applicant shall acquire a City of Merced Business License.
15. A Commercial Cannabis Business Permit is valid for one year or until December 31 of each year, unless sooner revoked. Applications for the renewal of a permit shall be filed with the Director of Development Services, in accordance with MMC 20.44.170(L)(5), "Commercial Cannabis Business Permit Renewal (All Types)", at least sixty (60) calendar days before the expiration of the current permit. If the permittee allows their permit to lapse, they shall be required to submit a new application, pay corresponding fees and be subject to all aspects of the selection process.
16. Future modifications to the scale, scope, activities, implementation, processes, materials, design, layout, or other factors pertaining to the operation of the project that are consistent with permits to perform activities related to the cultivation of cannabis and cannabis-based products may be authorized with the approval of the Director of Development Services by submitting a request for Minor Modification, in accordance with MMC 20.44.170(L)(7), "Modifications to Commercial Cannabis Business Permit (All Types)".

17. In the event that a proposed Minor Modification is submitted by the applicant that includes an expansion of building space being used, Staff shall reevaluate parking needs and the applicant shall provide additional parking if necessary.
18. If the site is to be gated, there must be a minimum 22-foot-wide clearance for emergency vehicles to pass through when the gate is opened. If the gate requires manual operation, the applicant shall provide a Knox padlock, prior to issuance of a Certificate of Occupancy. If the gate requires electronic operation, prior to issuance of a Certificate of Occupancy, the applicant shall provide a Knox override switch with "Click-to-Enter." Access to this equipment shall be provided to the City of Merced Police, Fire, and Refuse Departments.
19. Prior to commencement of cannabis manufacturing activities, applicant shall provide an estimated volume of City water to be used annually to the City Water Department, and shall have floor plans, equipment, material sheets, and such other materials/plans/permits as deemed necessary approved by the Chief Building Official and Fire Chief.
20. The developer and operator shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
21. The applicant shall work with the City's Refuse Department to determine the proper location for a trash enclosure and if a recycling container will be required to comply with AB 341. The container(s) shall be enclosed within a refuse enclosure built to City standards.
22. The parking lot layout shall comply with all applicable City Standards. Applicant shall obtain all required permits including an encroachment permit with the City Engineering Department if necessary.
23. The applicant shall meet the standard parking requirement using the regulation for Manufacturing uses by providing on-site parking or by obtaining off-site parking at the approval of the Site Plan Committee via a shared parking agreement with an adjacent lot or one that is a maximum of 400 feet from the proposed property, per MMC Section 20.38.040 C – General Requirements.
24. Appropriate turning radii shall be provided within the parking areas to allow for Fire engine and refuse truck access.

25. The applicant shall provide or cause to be provided the necessary Accessible Parking Spaces in accordance with Table 11B-208.2, "Parking Spaces" of the California Building Code, Title 24, Part 2.
26. In accordance with Table 20.38-4, "Required Bicycle Parking Spaces" of the City of Merced Zoning Ordinance, the applicant shall provide or cause to be provided a minimum of 3 short-term and 3 long-term bicycle parking spaces.
27. The applicant shall provide required loading spaces in accordance with Table 20.38-5, "Required Loading Spaces."
28. Signage shall be limited to no more than fifty square feet and must comply with MMC 20.44.170(I)(2) that no exterior evidence of cannabis cultivation shall be visible from the public right-of-way. The display of the name of the facility shall not be construed on its own to provide such evidence. Details to be worked out with Planning staff.
29. Security practices shall comply with all standards under the State and local standards within MMC Section 20.44.170 E (3).

Findings and Considerations
Planning Commission Resolution #4135
Commercial Cannabis Business Permits #24-01 and #24-02

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed projects comply with the General Plan designation of Manufacturing Industrial (IND) and the zoning classification of Light Industrial (I-L) with approval of a Commercial Cannabis Business Permit.

Land Use Issues

- B) The subject site is more than 1,000 feet from any schools and more than 600 feet from any day care centers, youth centers, libraries, or public parks that are currently in existence, as is required by Section 11362.768 of the Health and Safety Code and Section 20.44.170(E)(3)(f) of the Merced Municipal Code (MMC). The parcel immediately to the west is owned by the Merced City School District. However, it is used as a support facility, not as a school site. Section 20.90.020 of the City of Merced Municipal Code defines "schools" as public or private facilities for education, including elementary, junior high, and high schools, both public and private. The California Department of Education further defines "school" as a term that is used to refer to all educational institutions that have the following characteristics: 1. have one or more teachers to give instruction; 2. have an assigned administrator; 3. are based in one or more buildings and; 4. contain enrolled or prospectively enrolled students. The Merced City School property is not currently used for education. It does not have one or more teachers to give instruction, nor does it have enrolled students participating in scheduled classes onsite.

Proposed Operations

- C) The applicant intends to establish and operate a manufacturing and distribution facility for cannabis-based products to be sold to other licensed cannabis businesses. The products shall not be sold to members of the general public. The permit allows products to be distributed by the applicant in accordance with state and local law. Proposed operating hours are Monday through Friday, from 8:00 a.m. to 5:00 p.m., with an anticipated staff of six (6) people at start up with a total of twenty-two (22) employees within a year of operation.

Traffic/Circulation

- D) As the project is proposed on a vacant lot, the parking lot layout shall be designed and built per City standards. All necessary permits shall be obtained by the applicant (Condition #22). The proposed layout will be reviewed at the building permit stage. Due to conformity with the zoning and land use for the site, no concerns related to traffic or circulation have been raised as a result of this project.

Parking

- E) The subject site is surrounded by industrial uses to the north and west of the property. A 26,000 square foot manufacturing building is being proposed. The zoning code

would require a parking ratio of 1 space per 1,000 square feet, plus parking for company vehicles. With the standard 15% reduction for floor area, this project would be required to provide 22 spaces. Instead, the project proposes 16 spaces. Due to the fact part of this building will be used for storage and distribution, where the number of required spaces changes to 1 per 2,000 square feet of floor area, the planned parking should accommodate the proposed use and operations (Details will be addressed by the Planning staff at the time of building permit issuance.). Bicycle parking spaces, accessible spaces, and loading spaces shall be provided as required in Conditions #25, #26, and #27.

Neighborhood Impact/Interface

- F) The subject site is surrounded by industrial uses to the north and west of the property and vacant lots to the south and east. The facility will be screened and maintained indoors with HVAC and air-filtering equipment to prevent odors. Because of this, the proposed project should not have a significant impact on the surrounding area.
- G) A public hearing notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. As of the date that this report was prepared, staff has not received any comments from the community about this project.

Signage

- H) Currently submitted plans do not show any request for signage. Any future signage must comply with Condition #28 and are limited to 50 square feet maximum. Signs shall not provide evidence of cannabis business activities. The display of the name of the facility shall not be construed on its own to provide such evidence.

Safety/Security

- I) The applicant proposes constructing a perimeter security fence around the site. This fence would be built to have a single gated entrance with a guard stationed there in a guard booth. This person will be required to adhere to access protocol. There will be additional guards patrolling the premises. Security surveillance will comply with the requirements of the City. Cameras will record for a minimum of 60 days and record to have all information stored on the cloud. Security systems will be IP-centric and fully networked. All recordings will be archived in a manner that is easily and appropriately retrievable at the request of the City Police Department. All security practices shall comply with the standards contained in MMC Ordinance Section 20.44.170 E (3) (Condition #29).

Ownership

- J) Moak, Inc. has two (2) owners with 5% or more interest in the proposed business. Muhamed Almutarreb and Oktay Senvardarli each own more than 5% of the proposed business and have each performed a Live Scan check and have successfully passed background checks to the satisfaction of the Chief of Police.

Modification to Operations

- K) City staff recognizes that the details of operating a business, particularly one in a developing sector such as cannabis and cannabis-based products, requires continual updating of business practices, methodologies, and tools, the modification of which may require alterations to the configuration of the equipment, setup, or layout of the facility. In order to allow for these changes while maintaining the safety of all parties involved, modifications to the permit in the course of manufacturing and/or distribution of cannabis and cannabis-based products may be requested by the applicants by submitting a request for Minor Modification, in accordance with MMC 20.44.170(L)(7), “Modifications to Commercial Cannabis Business Permit (All Types)” (Conditions #15 and #16).

Environmental Clearance

- L) The project proposes to construct a building on an in-fill site comprised of approximately 43,045 square-feet. Planning staff has conducted an environmental review of the project (Environmental Review #24-06) in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment I of Staff Report #24-384). No further environmental review is required.