

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA, ADDING
CHAPTER 20.84, "MEDICAL MARIJUANA AND
CULTIVATION" AND AMENDING SECTIONS
20.20.040 "CONDITIONAL USES," 20.24.040
"CONDITIONAL USES," AND 20.28.040,
"CONDITIONAL USES," OF THE MERCED
MUNICIPAL CODE REGARDING THE ZONING
OF MEDICAL MARIJUANA DISPENSARIES AS
CONDITIONAL USES**

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

SECTION 1. AUTHORITY. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to, Article XI, Section 7 of the California Constitution, the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program (California Health and Safety Code § 11362.7 et seq.), and The Medical Marijuana Regulation and Safety Act (AB 266, AB 243, and SB 643; hereafter "MMRSA").

SECTION 2. ADOPTION OF CHAPTER 20.84. Chapter 20.84, Medical Marijuana and Cultivation," is hereby added to the Merced Municipal Code to read as follows:

**"Chapter 20.84
MEDICAL MARIJUANA AND CULTIVATION**

Section:

- | | |
|------------------|-------------------------|
| 20.84.010 | Definitions. |
| 20.84.020 | Regulations. |
| 20.84.030 | Public Nuisance. |
| 20.84.040 | Civil Penalties. |

20.84.010 Definitions.

‘Cannabis’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as the same may be amended from time to time.

‘Caregiver’ or ‘primary caregiver’ shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

‘Commercial cannabis activity’ shall have the same meaning as that set forth in Business and Professions Code Section 19300.5(k) as the same may be amended from time to time.

‘Cultivation’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as the same may be amended from time to time.

‘Delivery’ or ‘deliveries’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as the same may be amended from time to time.

‘Dispensary’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as the same may be amended from time to time. ‘Dispensary’ shall not include the following uses:

- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code,
- (2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code,
- (3) A residential care facility for persons with chronic life-threatening illnesses licensed pursuant

to Chapter 3.01 of Division 2 of the California Health and Safety Code,

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code,

(5) A residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

‘Medical cannabis,’ ‘medical cannabis product,’ or ‘cannabis product’ shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

‘Medical Marijuana Regulation and Safety Act’ or ‘MMRSA’ shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

‘Qualifying patient’ or ‘Qualified patient’ shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

20.84.020 Regulations.

A. Commercial cannabis activities are expressly prohibited in all zones in the City of Merced; provided, however, dispensaries are allowed in the C-O, C-C and C-G districts as a conditional use or in Planned Developments which have the equivalent General Plan land use designations of Commercial Office (CO), Regional/Community Commercial (RC), or General Commercial (CG).

B. Dispensaries located in the City of Merced are authorized to make deliveries within the City of Merced only if the dispensary has a valid conditional use permit

from the City and the dispensary fully complies with all requirements of state and local law for deliveries.

C. Dispensaries located outside of the City of Merced are authorized to make deliveries within the City of Merced only if the dispensary is duly authorized to operate in the California jurisdiction in which it is located, the dispensary is not prohibited by the jurisdiction in which it is located from making deliveries outside of that jurisdiction, and the dispensary fully complies with all requirements of state and local law for deliveries.

D. Cultivation of cannabis for commercial purposes, is expressly prohibited in all zones and all specific plan areas in the City of Merced; provided, however, that twelve or fewer marijuana plants, mature or immature, may be cultivated on any lot if the owner, lessee or tenant of the lot is the primary caregiver or the qualified patient and the cannabis is intended for the qualified patient. Under no circumstances shall more than twelve marijuana plants, mature or immature, be allowed on any lot within the City.

20.84.030 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter 20.84 shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.

20.84.040 Civil Penalties.

In addition to any other enforcement permitted by this Chapter 20.84, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent

jurisdiction may award reasonable attorney fees and costs to the prevailing party.”

SECTION 3. AMENDMENT OF SECTION 20.20.040. Section 20.20.040, “Conditional Uses,” is hereby amended to read as follows:

“20.20.040 Conditional uses.

The following are conditional uses:

- A. Public and quasipublic uses appropriate to the district, such as hospitals, convalescent or nursing homes and professional, business and technical schools;
- B. Mortuaries and crematories;
- C. R-4 district residential uses subject to all restrictions and requirements of that district;
- D. Public utility uses, substation, and communication equipment buildings;
- E. Signs for single occupant in excess of the allowable area, but not to exceed fifty (50) square feet per lot;
- F. Prescription pharmacies, without variety goods;
- G. Bail bond businesses;
- H. Day care facilities for more than twelve children;
- I. Day care facilities for the elderly of twelve or fewer persons;
- J. Beauty salons, barber shops, tanning salons, and nail salons;
- K. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44; and

- L. Medical marijuana dispensaries.”

SECTION 4. AMENDMENT OF SECTION 20.24.040. Section 20.24.040, “Conditional Uses,” is hereby amended to read as follows:

“20.24.040 Conditional uses.

The following are conditional uses:

- A. Public and quasi-public uses appropriate to the C-C district;
- B. Creamery, laundry, cleaning, and dyeing establishment employing less than ten (10) persons on the premises;
- C. Used car sales;
- D. Night club, bowling alley, dance hall, roller skating rink;
- E. Automobile service station;
- F. Sidewalk cafe;
- G. Printing and publishing or lithographic shop;
- H. R-4 district residential uses, subject to all restrictions and requirements of that district;
- I. Public utility uses, substations, and communication equipment buildings;
- J. Refrigerated locker plants;
- K. Mortuary;
- L. Heating and air-conditioning sales and services;
- M. Taverns, cocktail lounges, and cardrooms;
- N. Public transportation terminals;

- O. Commercial baking plant;
- P. Commercial laundry plant;
- Q. Drive-in restaurant, drive-through restaurant;
- R. Billiard parlor or pool hall with six (6) or more tables;
- S. Day care facilities for more than twelve (12) children;
- T. Day care facilities for the elderly of twelve (12) or fewer persons;
- U. Retail business of twenty thousand (20,000) square feet or less selling alcoholic beverages for off-site consumption;
- V. Tattoo parlors;
- W. Hookah bars;
- X. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44; and
- Y. Medical marijuana dispensaries.”

SECTION 5. AMENDMENT OF SECTION 20.28.040. Section 20.28.040, “Conditional Uses,” is hereby amended to read as follows:

“20.28.040 Conditional uses.

The conditional uses are:

- A. Public or quasi-public uses appropriate to the C-G district;
- B. Salvage and wrecking operations;
- C. Commercial recreation facilities, including but not limited to drive-in theaters and bowling alleys;

- D. Concrete mixing and asphalt mixing yards;
- E. Other retail commercial uses, listed as principal permitted uses in the C-T or C-C district, and not listed as permitted uses in the CG district, appropriate in or necessary to serve a general commercial area, but not including residential uses or institutions for human care;
- F. Heliports;
- G. Taverns, cocktail lounges and cardrooms;
- H. Carwash;
- I. Drive-in restaurant, drive-through restaurant;
- J. Fast-food restaurant;
- K. Garment manufacturing facilities;
- L. Pregnancy counseling and testing clinic;
- M. Day care facilities for the elderly of twelve or fewer persons;
- N. Retail business of 20,000 square feet or less selling alcoholic beverages for off-site consumption;
- O. Beauty salons, barber shops, licensed massage establishments, tattoo parlors, tanning salons, and nail salons;
- P. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44; and
- Q. Medical marijuana dispensaries.”

SECTION 6. CEQA. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15305, minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density and Section 15061(b)(3) which is the general rule that CEQA applies

only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

SECTION 7. 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 8. 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 _____, 2016, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2016, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

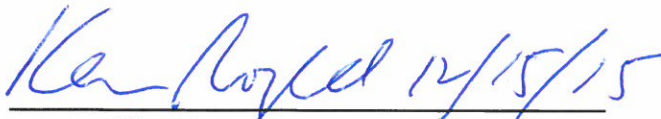
Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM



City Attorney Date