

2454

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 20.84, "MEDICAL
MARIJUANA AND CULTIVATION" AND
AMENDING SECTION 20.20.040 "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. AMENDMENT OF CHAPTER 20.84. Chapter 20.84, "Medical Marijuana and Cultivation," is amended 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’ or ‘marijuana’ 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(d) 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(j) as the same may be amended from time to time and shall also include “the cultivation, manufacture, possession, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.”

‘Cultivation’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(k) 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(af) 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(f) 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, medical marijuana dispensaries are allowed as a conditional use in the C-O District and Planned Developments which have the equivalent General Plan land use designations of this zone, subject to:

- i. the restrictions of Section 20.84.020(B) on the prohibited locations of dispensaries within the C-O District and Planned Developments that have the equivalent General Plan land use designations of that zone;
- ii. the limitations of Section 20.84.020(C) on the number of dispensaries that may be authorized within the City at any given time;
- iii. the requirement that, prior to applying for a conditional use permit, a proposed operator shall first obtain a separate regulatory permit from the City to operate a dispensary in the City; and
- iv. any conditions imposed to protect the public health, safety and welfare and/or to minimize the secondary effects, if any, of the dispensary.

B. A dispensary shall not be approved in the C-O District if any following conditions apply:

- i. The proposed dispensary would be located within 600 feet of the property line of any kindergarten, elementary school, middle school or high school.
- ii. The proposed dispensary would be located within 500 feet of the property line of any public park that includes playgrounds, active play areas and/or sports fields. For purposes of this subsection only, a park shall not include any park designated in Section 9.70.030 as a bike path.
- iii. The proposed dispensary would be located within 500 feet of the property line of any youth center, City-owned and operated recreational center or public library.

C. No more than four (4) dispensaries shall be authorized to operate in the City at any given time. If four (4) dispensaries are authorized to locate within the City, then no additional conditional use permits shall be approved to operate a dispensary within the City.

D. Only licensed dispensaries are authorized to make deliveries of medical cannabis and medical cannabis products within the City of Merced. Such deliveries shall occur solely between the hours of 8:00 a.m. and 7:00 p.m. All other deliveries of marijuana or marijuana products within the City are expressly prohibited.

E. Cultivation of cannabis is expressly prohibited in all zones and all specific plan areas in the City; provided, however, that six (6) plants may be cultivated indoors within a legally permitted structure on any lot within the City 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.

F. Notwithstanding any language in this Section 20.84.020 to the contrary, no application for a conditional use permit for a dispensary and/or an application for a regulatory permit for a dispensary shall be accepted by the City until such time as the City has adopted:

- i. specific regulations regarding the operations of the dispensaries; and
- ii. objective standards for the issuance of the regulatory permit that a proposed operator must obtain prior to applying for a conditional use permit for a dispensary.

As of August 15, 2016, because the City has not adopted specific regulations regarding the operations of dispensaries and objective standards for the issuance of regulatory permits for dispensaries, the City is currently not authorized to accept applications for regulatory

permits for dispensaries or applications for a conditional use permit for dispensaries.

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, subject to the regulations and restrictions of Section 20.84.020.”

SECTION 4. 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 5. 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:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant City Clerk

(SEAL)

APPROVED AS TO FORM

Ken Ryland 7/21/16
City Attorney Date