

**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

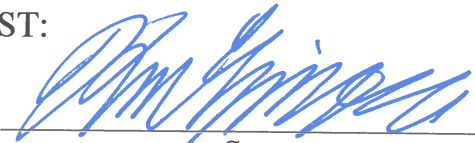
Adopted this 17<sup>th</sup> day of March 2021

*Michael Harris*

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Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



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Secretary

Exhibits:

Exhibit A –Findings/Considerations

Exhibit B—Draft Ordinance

Ref: KIM/PROJECTS/2021/ZOA 21-01--Procedures/#4061 ZOA#21-01 Procedures.docx

**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: *“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).”*

- 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: “*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).*”
- 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: “*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).*”
- 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: “*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).*”
- 5) Section 20.44.170(L)(8)(c)(i) “Revocation of Commercial Cannabis Business Permit (All Types)” would be changed 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).*”
- 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: “*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*

#### EXHIBIT A

#### OF PLANNING COMMISSION RESOLUTION #4061

*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).*

### **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" 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 2<sup>nd</sup> 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).”

EXHIBIT B  
OF PLANNING COMMISSION RESOLUTION #4061

**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:**

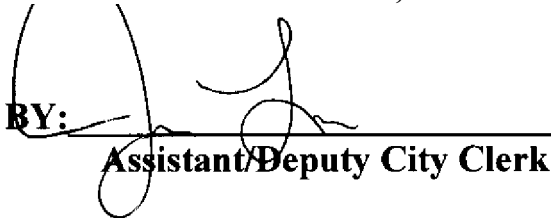
**ABSTAIN: Council Members:**

EXHIBIT B  
OF PLANNING COMMISSION RESOLUTION #4061

**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)