



# CITY OF MERCED

## Meeting Agenda

City Council Chamber  
Merced Civic Center  
2nd Floor  
678 W. 18th Street  
Merced, CA 95340

### City Council/Public Finance and Economic Development Authority/Parking Authority

Monday, March 4, 2019

6:00 PM

Council Chambers, 2nd Floor, Merced Civic  
Center, 678 W. 18th Street, Merced, CA 95340

**Council Member Shelton will be attending via Teleconference from the Murieta Inn,  
First Floor Sales Office, 7337 Murieta Drive, Rancho Murieta, CA 95683**

**Closed Session at 5:00 PM / Regular Meeting at 6:00 PM**

#### NOTICE TO PUBLIC

#### WELCOME TO THE MEETING OF THE MERCED CITY COUNCIL

At least 72 hours prior to each regular City Council meeting, a complete agenda packet is available for review on the City's website at [www.cityofmerced.org](http://www.cityofmerced.org) or at the City Clerk's Office, 678 W. 18th Street, Merced, CA 95340. All public records relating to an open session item that are distributed to a majority of the Council will be available for public inspection at the City Clerk's Office during regular business hours.

#### **PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE CITY CLERK**

Members of the audience who wish to address the City Council are requested to complete a speaker card available at the podium against the right-hand side of the Council Chamber. Please submit the completed card to the City Clerk before the item is called, preferably before the meeting begins.

#### **INDIVIDUALS WITH DISABILITIES**

Accommodation for individuals with disabilities may be arranged by contacting the City Clerk at (209) 388-8650. Assisted hearing devices are available for meetings held in the Council Chamber.

#### **A. CLOSED SESSION ROLL CALL**

#### **B. CLOSED SESSION**

- B.1.** [19-111](#) **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS - Agency Designated Representative: City Manager Steve Carrigan; Employee Organizations: Merced Police Officers' Association (MPOA); Merced Association of Police Sergeants. AUTHORITY: Government Code Section 54957.6

- B.2.**    [19-094](#)            **SUBJECT: CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant Exposure to Litigation pursuant to Government Code section 54956.9(d)(2): (2) cases**

**C. CALL TO ORDER**

C.1. Invocation - Lamar Henderson, All Dads Matter

C.2. Pledge of Allegiance to the Flag

**D. ROLL CALL**

D.1. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority and the Public Financing and Economic Development Authority. City Council members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority and the Public Financing and Economic Development Authority receive no compensation.

**E. REPORT OUT OF CLOSED SESSION**

**F. CEREMONIAL MATTERS**

- F.1.**    [19-096](#)            **SUBJECT: Proclamation - National Women's Day**

**REPORT IN BRIEF**

Mayor Murphy will present the proclamation to a representative of the Hispanic Chamber of Commerce.

**G. WRITTEN PETITIONS AND COMMUNICATIONS**

**H. ORAL COMMUNICATIONS**

Members of the public who wish to speak on any matter not listed on the agenda may speak during this portion of the meeting and will be allotted 5 minutes. The Mayor may, at his discretion, reduce the time to 3 minutes if there are more than 3 speakers, in order to accommodate as many speakers as possible. State law prohibits the City Council from acting at this meeting on any matter raised during the public comment period. Members of the public who wish to speak on a matter that is listed on the agenda will be called upon to speak during discussion of that item.

**I. CONSENT CALENDAR**

Adoption of the Consent Calendar may be made by one motion of the City Council, provided that any Council member, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the item will be discussed and voted on separately.

- I.1. [18-636](#)      **SUBJECT:** Reading by Title of All Ordinances and Resolutions

**REPORT IN BRIEF**

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

**RECOMMENDATION**

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

- I.2. [19-093](#)      **SUBJECT:** Information Only - Planning Commission Meeting Minutes of January 23, 2019

**RECOMMENDATION**

For information only.

- I.3. [19-114](#)      **SUBJECT:** Information Only - Arts and Culture Advisory Commission Meeting Minutes of January 10, 2019

**RECOMMENDATION**

For information only.

- I.4. [19-080](#)      **SUBJECT:** Information-Only Contracts for the Month of February 2019

**REPORT IN BRIEF**

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

**AUTHORITY**

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted FY 2018-2019 threshold of \$69,833.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2018-2019 threshold of \$31,000.00, the contracts listed on the attached table were entered into by the City.

- I.5. [19-097](#)      **SUBJECT:** Approval of City Council/Public Financing and Economic

Development/Parking Authority Meeting Minutes of February 4, 2019

**REPORT IN BRIEF**

Official adoption of previously held meeting minutes.

**RECOMMENDATION**

**City Council/Public Financing and Economic Development/Parking Authority** - Adopt a motion approving the meeting minutes of February 4, 2019.

I.6. [19-098](#)

**SUBJECT:** Approval of First Amendment to the Agreement for Labor Relations Consulting to Approve an Additional \$60,000 for Labor Contract Negotiations and Employee Related Legal Services with Law Firm of Liebert Cassidy Whitmore, for the Not to Exceed Amount of \$160,000

**REPORT IN BRIEF**

Consider approving first amendment to the Liebert Cassidy Whitmore Agreement for the not to exceed amount of \$160,000.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving the first amendment to an agreement for professional services with Liebert Cassidy Whitmore for continuing labor relations consulting, labor contract negotiations, and employee related matters in an amount not to exceed \$160,000; and,

B. Authorizing the Finance Officer to make any necessary budget adjustments; and,

C. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

I.7. [19-101](#)

**SUBJECT:** Approval of Purchase and Sale Agreement Between the City of Merced (Seller) and Valley Children's Healthcare (Buyer) for the 4.54 Acre Parcel Located at 301 W. Yosemite Ave., Merced, CA in the Amount of \$2,100,000

**REPORT IN BRIEF**

Considers approving a Purchase and Sales Agreement for the sale of a City owned 4.54 acre parcel located at 301 W. Yosemite Avenue to Valley

Children's Healthcare for the development of a pediatric primary and specialty care medical office building. The Agreement contains escrow instructions for the sale of the property.

**RECOMMENDATION**

**City Council** - Adopt a Motion:

- A. Approving the purchase and sale agreement between the City of Merced and Valley Children's Healthcare for 301 W. Yosemite Avenue (Assessor's Parcel Number 231-040-021); and,
- B. Authorizing the City Manager or the Assistant City Manager to execute all the necessary documents; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

I.8. [19-035](#)

**SUBJECT:** Approval of Revenue Increase in the Amount of \$9,450 to Other Revenue/Unclassified and Authorization to Appropriate in the Same Amount to the Training Expense Accounts Associated with the Fire Department External Training Program

**REPORT IN BRIEF**

Consider approving a revenue increase to the Other Revenue/Unclassified account and appropriation of the same amount to the Training Expense account.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving an increase to revenue account 001-0901-360.01-01 (Other/Unclassified) of \$9,450; and,
- B. Approving an appropriation of the same amount to 001-0901-522.20-00 (Training Expense); and,
- C. Authorizing the Finance Officer to make budget adjustments as recommended by staff.

I.9. [19-095](#)

**SUBJECT:** Approval of Retention of Atkinson Farasyn, LLP as Special Counsel to Assist with the Negotiation and Preparation of Development Agreements, Including Pre-Annexation Development Agreements, for the Not to Exceed Amount of the Cost of Services Related to a Developer's Specific Project; Authorization of a Budget Amendment

for Fiscal Year 2018/2019 to Accept and Appropriate Developer Deposits to Pay for the Cost of the Negotiation and Legal Review of Development Agreements, Including Pre-Annexation Development Agreements

**REPORT IN BRIEF**

Considers retaining the law firm of Atkinson, Farasyn, LLP as Special Counsel for pre-annexation development agreements and appropriating developer deposits to pay for the cost associated with the negotiation and legal review of said agreements.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Amending the Fiscal Year 18/19 budget to receive the funds and increase cost recovery revenue for special counsel services and continually appropriate any funds received to pay for the costs related to the negotiation and legal review of development agreements; and,
- B. Authorizing the establishment of any additional accounts and/or revenue and expenditure lines within the City Attorney's budget as determined necessary and appropriate by the City's Finance Officer; and,
- C. Approving the Professional Services Agreement with Atkinson, Farasyn LLP to assist in the negotiation and legal review of Development Agreements, including Pre-Annexation Development Agreements, and authorize the City Manager or the Assistant City Manager to execute the same.

**I.10.** [19-091](#)

**SUBJECT:** Approval of Street Closure Request #19-02 (Lao Association, with Merced Main Street Association) for Use of West Main Street between K and M Streets for the Lao New Year Celebration Event on April 13, 2019 from 8:00 AM to 6:00 PM

**REPORT IN BRIEF**

The Lao Association, with co-sponsor Merced Main Street Association, is requesting the closure and use of West Main Street between K and M Streets for a celebration of the Lao culture, to include a procession, on Saturday, April 13, 2019, from 8:00 a.m. to 6:00 p.m.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the street closures of W. Main Street, between K and M Streets (including Canal Street between W. Main

and Arbor Lane), from 8 a.m. to 6 p.m. for the Vendor Fair event, and W. Main Street, between I and K Streets, from 8 a.m. to 1 p.m. for the float parking and set-up, on Saturday, April 13, 2019, subject to the details and conditions outlined in the administrative staff report.

**I.11.** [19-090](#)

**SUBJECT:** Approval of Street Closure Request #19-03 by the Sacred Heart Catholic Church to Host the “Stations of the Cross” Reenactment and the Silent March for Good Friday on April 19, 2019, from 3:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 8:00 p.m. on Canal Street Between West 13th and West 11th, West 11th Street Between Canal and M Streets, West 12th Street Between M and Canal Streets and the Alleyway Behind Sacred Heart Catholic Church

**REPORT IN BRIEF**

Considers approving a request by the Sacred Heart Catholic Church for the closure and use of City streets on April 19, 2019, for the Stations of the Cross Reenactment. The request seeks approval to close Canal Street (between West 13th Street and West 11th Street), West 11th Street (between Canal Street and M Street), M Street (between West 11th Street and West 13th Street), West 12th Street (between M Street and Canal Street) and the alleyway behind the church located between W. 13th Street and 12th Street on Friday, April 19, 2019, from 3:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 8:00 p.m.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the closure of Canal Street (between West 13th Street and West 11th Street), West 11th Street (between Canal Street and M Street), M Street (between West 11th Street and West 13th Street), West 12th Street (between M Street and Canal Street) and the alleyway behind the church located between W. 13th Street and 12th Street, as requested by Sacred Heart Catholic Church, on Friday, April 19, 2019, from 3:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 8:00 p.m.; subject to the conditions outlined in the administrative staff report.

**I.12.** [19-106](#)

**SUBJECT:** Second Reading and Adoption of Ordinance 2498 to Amend Section 20.44.170, “Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required”

**REPORT IN BRIEF**

Adoption of previously introduced Ordinance to amend section 20.44.170, “Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required” of the Merced Municipal Code.

**RECOMMENDATION**

**City Council** - Adopt a motion approving **Ordinance 2498**, an Ordinance of the City Council of the City of Merced, California, Amending Section 20.44.170, "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required," of the Merced Municipal Code.

**J. PUBLIC HEARINGS**

Members of the public who wish to speak on public hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to further public comment and brought to the Council for discussion and action. Further comment will not be received unless requested by the Council.

**J.1.**    [19-074](#)

**SUBJECT:** Public Hearing - Introduction of Ordinance Approving a Mitigated Negative Declaration for Environmental Review #18-02 and Site Utilization Plan Revision #38 to Planned Development (P-D) #1 Allowing the Renovation of the Merced Mall and Theatre, Including the Possibility of Relocating the Theatre Adjacent to the Merced Mall Building

**REPORT IN BRIEF**

Introduces Ordinance No. 2499 and considers approving a Site Utilization Plan Revision for Planned Development (P-D) #1, a Mitigated Negative Declaration for Environmental Review #8-02 and Site Utilization Plan #38 allowing renovations to the Merced Mall located at 851 West Olive Avenue and the United Artists movie theater located at 645 Fairfield Drive, including possible relocation.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Introducing **Ordinance 2499**, an Ordinance of the City of Merced, California approving a Mitigated Negative Declaration for Environmental Review #18-02 and Site Utilization Plan Revision #38 to Planned Development (P-D) #1 allowing the Renovation of the Merced Mall and Theatre, including the possibility of relocating the theatre adjacent to the Merced Mall building.

B. Authorizing the City Manager or the Assistant City Manager to execute the Legislative Action Agreement.

## K. REPORTS

### K.1. [19-076](#)

**SUBJECT:** Report - Approval of Professional Services Agreement with EMC Planning Group in the Amount of \$423,136 for the Preparation of a North Merced Annexation Feasibility Study

#### REPORT IN BRIEF

Considers approving a Professional Services Agreement with EMC Planning Group in the amount of \$423,136, for the preparation of a North Merced Annexation Feasibility Study.

#### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving a Professional Services Agreement with EMC Planning Group, Inc., in the amount of \$423,136, for the preparation of a North Merced Annexation Feasibility Study; and,
- B. Authorizing a Supplemental Appropriation in Fund 017-Development Services in the amount of \$220,136; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the documents; and,
- D. Directing City staff to pursue the development of a North Merced Annexation Feasibility Study Reimbursement Fee to recover the cost of the project from future applicants for annexation within the Study Area.

### K.2. [19-115](#)

**SUBJECT:** Report - Update on Emergency Medical Service (EMS) and Direction on Next Steps to Evaluate the Potential of Implementing Various Levels of Advanced Life Support within the City of Merced

#### REPORT IN BRIEF

Provide City Council with an update on Emergency Medical Services (EMS) and obtain direction on next steps in evaluating the potential of implementing various levels of Advanced Life Support within the City of Merced.

#### RECOMMENDATION

Provide staff direction on next steps related to Advance Life Support implementation.

## **L. BUSINESS**

L.1. [19-103](#) **SUBJECT: Council to Set FY 2019/20 Goals and Priorities**

### **REPORT IN BRIEF**

Staff will provide an update on FY 2018/19 Goals and Priorities and present summary of recent Town Hall discussion topics. Council will have an opportunity to provide input on setting Goals & Priorities for FY 2019/20.

### **RECOMMENDATION**

Provide staff direction on Goals and Priorities for FY 2019/20.

L.2. Request to Add Item to Future Agenda

L.3. City Council Comments

## **M. ADJOURNMENT**



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.1.**

Meeting Date: 3/4/2019

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**SUBJECT: CONFERENCE WITH LABOR NEGOTIATORS - Agency Designated Representative: City Manager Steve Carrigan; Employee Organizations: Merced Police Officers' Association (MPOA); Merced Association of Police Sergeants. AUTHORITY: Government Code Section 54957.6**



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.2.**

Meeting Date: 3/4/2019

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**SUBJECT:** CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant Exposure to Litigation pursuant to Government Code section 54956.9(d)(2): (2) cases



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item F.1.**

Meeting Date: 3/4/2019

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**SUBJECT:** Proclamation - National Women's Day

### REPORT IN BRIEF

Mayor Murphy will present the proclamation to a representative of the Hispanic Chamber of Commerce.

### ATTACHMENTS

1. Proclamation



# Proclamation

WHEREAS, the month of March is affirmed as a Women's History month in United States, and Women's Day is celebrated globally on March 8th every year in honor of the remarkable contributions of women to our society; and,

WHEREAS, Women's Day is a day when people around the world come together to recognize the struggles of women and the achievements of women; and,

WHEREAS, Women's Day commemorates the inspiring role of women around the world to secure women's rights and build more equitable societies; and,

WHEREAS, Women's Day also remembers the voices of many women that go unheard and who continue to be dominated from securing their rights and realizing their full potential; and,

WHEREAS, International Women's Day honors the women who have paved the way to our progress and struggled to take 'womanhood' to a higher level, and,

WHEREAS, this day identifies the rights and power of women and gives them the stature they deserve,

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, on behalf of the City Council hereby proclaim the March 8<sup>th</sup> as a Day of Service in The City of Merced, and call upon it's citizens to pay tribute to the life and works of ALL Women through participation in community service projects on National Women's Day and throughout the year.

Signed this 4<sup>th</sup> day of March 2019.

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*Mike Murphy, Mayor of Merced*



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.1.**

Meeting Date: 3/4/2019

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**SUBJECT:** Reading by Title of All Ordinances and Resolutions

### REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

### RECOMMENDATION

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.2.**

Meeting Date: 3/4/2019

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*Report Prepared by: Stephani Davis, Development Services Tech II, Planning Division*

**SUBJECT:** Information Only - Planning Commission Meeting Minutes of January 23, 2019

### **RECOMMENDATION**

For information only.

### **ATTACHMENTS**

1. PC Minutes 01-23-2019

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, January 23, 2019

Chairperson DYLINA called the meeting to order at 7:01 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Mary Camper, Scott G. Drexel, Michael Harris, Jeremy Martinez, Peter Padilla, Sam Rashe, and Chairperson Robert Dylina

Commissioners Absent: None

Staff Present: Director of Development Services McBride, Planning Manager Espinosa, Principal Planner Hren, Associate Planner Nelson, City Attorney Norton, Interim Deputy City Attorney Flores, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

M/S PADILLA-HARRIS, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S PADILLA-HARRIS, and carried by unanimous voice vote, to approve the Minutes of January 9, 2019, as submitted.

3. **COMMUNICATIONS**

None.

#### 4. ITEMS

- 4.1 General Plan Amendment #18-03, Site Utilization Plan Revision #6 to Planned Development (P-D) #46, and Revision #4 to Fahrens Creek Specific Plan, initiated by M & B Bruno Family LP, property owners. The application is a request to change the General Plan designation for approximately 10.73 acres of land on the west side of San Augustine, approximately 980 feet north of Yosemite Avenue, from Business Park (BP) to High Medium Density Residential (HMD). The request also involves a Revision to the Fahrens Creek Specific Plan and a Site Utilization Plan Revision to Planned Development (P-D) #46 to change the land use designation from “mini-storage” to “multi-family.”

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #19-05.

Public testimony was opened at 7:13 p.m.

##### Speaker from the Audience in Favor:

RICK MUMMERT, Benchmark Engineering, representative for the Applicant, Modesto, CA

Mr. MUMMERT took time to thank City staff for their input and guidance regarding the project and gave a brief overview of the project.

The Commission asked questions regarding architecture style and parking layout.

##### Speaker from the Audience (Neutral):

JOEL MOSES, Merced

Mr. MOSES inquired on the capacity of existing sewer services and if there was a need for expanding the capacity for this project. He also had clarifying questions regarding the project's traffic study.

Associate Planner NELSON addressed Mr. MOSES' questions.

Commissioner RASHE voiced a concern of the project's impact on traffic in regards to Highway 59.

Commissioner CAMPER asked Mr. MUMMERT to clarify the anticipated timeline of the construction of the project.

No one spoke in opposition to the project.

Public Testimony was completed at 7:25 p.m.

M/S PADILLA-CAMPER, and carried by the following vote, to recommend to City Council adoption of a Negative Declaration regarding Initial Study #18-60, and approval of General Plan Amendment #18-03, Site Utilization Plan Revision #6 to Planned Development (P-D) #46, and Revision #4 to Fahrens Creek Specific Plan, subject to the Findings and thirty-eight (38) Conditions set forth in Staff Report #19-05 (RESOLUTION #4013):

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

NOES: None

ABSENT: None

ABSTAIN: None

4.2 Site Utilization Plan Revision #38 to Planned Development (P-D) #1, initiated by Merced Mall LTD, property owners. This application is a request to allow the renovation and expansion of the Merced Mall located at 851 W. Olive Avenue. The Project would increase the leasable retail area of the Merced Mall and construct a new movie theater at one of two possible locations within the project site. The project site consists of approximately 52 acres and is generally located on the north side of Olive Avenue between M and R Streets. The site has a General Plan designation of Regional/Community Commercial (RC) and is zoned Planned Development (P-D) #1.

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #19-04.

Public testimony was opened at 7:49 p.m.

Speaker from the Audience in Favor:

BILL KENNEY, The Kenney Co., representative for the Applicant, Newport Beach, CA

Mr. KENNEY gave a brief overview of the applicant's basic plans for carrying out the expansion, but confirmed that no tenants have been confirmed for vacant retail areas proposed in the expansion plans. He also thanked City Planning staff for their assistance with this project.

No one spoke in opposition to the project.

Public Testimony was completed at 7:58 p.m.

M/S CAMPER-PADILLA, and carried by the following vote, to recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program regarding Initial Study #18-02, and approval of Site Utilization Plan Revision #38 to Planned Development (P-D) #1, subject to the Findings and thirty-eight (38) Conditions set forth in Staff Report #19-04 (RESOLUTION #4014):

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

NOES: None

ABSENT: None

ABSTAIN: None

4.3 Zoning Ordinance Amendment #19-01, 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 Section 20.44.170 ("Commercial Cannabis Businesses"). This amendment would add a fifth permit for retail cannabis dispensaries to the allowable number within the City of Merced; the amendment also clarifies and modifies various parts of the permitting process for cannabis businesses.

Principal Planner HREN reviewed the report on this item. For further information, refer to Staff Report #19-02.

The Commission asked questions regarding the update to the Ordinance's definition for a school, the addition of the fifth CCBP permit, and clarification on Commercial Cultivation requirements.

Development Services Director McBRIDE addressed the Planning Commission; he explained their options and advised them to modify the recommendation to City Council if they had specific suggestions that they recognized as needing to be addressed.

Commissioner DREXEL voiced his concern of adding a fifth allowable permit before any of the originally approved four permits had opened for business.

Commissioner CAMPER stated unease with a number of changes included in the staff report due to their relation to previous issues regarding specific applications. She gave the addition of the fifth permit and the modification of a parcel as examples.

Principal Planner HREN confirmed that the parcel modifications are not exclusive to one site or application; all applicants would be able to utilize these updates.

Commissioner MARTINEZ asked for clarification on the addition of "full time instruction" to the ordinance's definition of school.

Mr. HREN explained that the addition of "full time" effectively eliminates cases of outliers that hold minimum instruction, like one day a year.

There was no one present wishing to speak regarding the project; therefore, public testimony was opened and closed at 8:42 p.m.

M/S PADILLA-HARRIS, and carried by the following vote, to recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #19-01, and approval of Zoning Ordinance Amendment #19-01, subject to the Findings and the draft Ordinance provided in Staff Report #19-02 (RESOLUTION #4015):

AYES: Commissioners Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

NOES: Commissioners Camper and Drexel

ABSENT: None

ABSTAIN: None

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

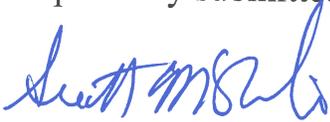
Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings.

Planning Manager ESPINOSA asked about the upcoming League of California Cities Planning Commission Academy in Long Beach on March 6, 2019, and which Commissioners were interested in attending (Commissioners Martinez, Rashe, Camper, and Harris expressed interest). She added that due to the number of Commissioners interested in attending the Academy, the Planning Commission Meeting of March 6, 2019, would need to be cancelled due to lack of a quorum.

6. **ADJOURNMENT**

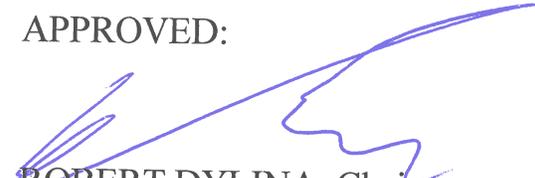
There being no further business, Chairperson DYLINA adjourned the meeting at 8:55 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



ROBERT DYLINA, Chairperson  
Merced City Planning Commission

**CITY OF MERCED  
Planning Commission**

**Resolution #4013**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **General Plan Amendment #18-03, Site Utilization Plan Revision #6 to Planned Development (P-D) #46, and Revision #4 to Fahrens Creek Specific Plan**, initiated by M & B Bruno Family LP, property owners. The application is a request to change the General Plan designation for approximately 10.73 acres of land on the west side of San Augustine, approximately 980 feet north of Yosemite Avenue, from Business Park (BP) to High Medium Density Residential (HMD). The request also involves a Revision to the Fahrens Creek Specific Plan and a Site Utilization Plan Revision to Planned Development (P-D) #46 to change the land use designation from “mini-storage” to “multi-family”; also known as Assessor’s Parcel No. 206-050-017; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through K of Staff Report #19-05; and,

**NOW THEREFORE**, after reviewing the City’s Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Initial Study #18-60, and approval of General Plan Amendment #18-03, Site Utilization Plan Revision #6 to Planned Development (P-D) #46, and Revision #4 to Fahrens Creek Specific Plan, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner PADILLA, seconded by Commissioner CAMPER, and carried by the following vote:

**AYES:** Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

PLANNING COMMISSION RESOLUTION # 4013

Page 2

January 23, 2019

Adopted this 23<sup>rd</sup> day of January 2019



\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:GPA #18-03/SUP Rev #6 to PD #46/Rev #4 to Fahrens Creek Specific Plan

**Conditions of Approval**  
**Planning Commission Resolution # 4013**  
**General Plan Amendment #18-03, Site Utilization Plan #6 to Planned**  
**Development (PD) #46, and Revision #4 to Fahrens Creek Specific Plan**

1. The proposed project shall be constructed/designed in substantial compliance with the Revised Site Plan (Attachment E of Planning Commission Staff Report #19-05) and the building elevations and floor plans (Attachments C and D of Planning Commission Staff Report #19-05), except as modified by the conditions. The Site Plan Review Committee shall approve the final design for the project, and may approve up to 176 units.
2. The Project shall comply with the applicable conditions set forth in Planning Commission Resolution #2675 (Attachment F of Planning Commission Staff Report #19-05) for Annexation Application #00-03, Pre-Zone Application #00-03, General (including Specific) Plan Amendment #00-09, and Environmental Review #00-31 (including the Mitigation Monitoring Program found at Attachment G of Planning Commission Staff Report #19-05) previously approved for this project, except as amended by this action.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. Approval of the General Plan Amendment, Revision to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision are subject to the applicant's entering into a written (legislative action) 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.

6. 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 (with counsel selected by the City), 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
7. 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.
8. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before the issuance of the first building permit. 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.

9. In compliance with Merced Municipal Code Section 20.20.020 Q, Site Plan Review approval is required prior to development to address conformance with the standards of Planned Development (P-D) #46.
10. All public improvements shall be installed along the project frontage to meet City Standards. Any existing improvements that have been damaged or otherwise do not meet current City Standards shall be repaired or replaced to meet City Standards. This includes, but is not limited, to sidewalk curb, gutter, street trees, and street lights. All public improvements shall be installed along the SR 59 property frontage in compliance with Caltrans Standards, as well as City of Merced Standards. This may include sidewalk, curb, gutter, street lights, and landscaping along the SR 59 street frontage.
11. Street trees shall be planted along the project frontage on San Augustine Avenue in compliance with City Standards.
12. The project applicant shall contribute to the cost of the future traffic signal at San Augustine Avenue and Yosemite Avenue. This amount shall be determined by the City Engineer based on the proportion of vehicle trips generated by this project expected to utilize the intersection. This amount shall be paid or bonded for prior to the issuance of the first building permit.
13. The project 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).
14. The project shall extend the sewer line in San Augustine Avenue, south across the entire property frontage or as required by the City Engineer.
15. All storm water shall be retained 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.
16. All new utilities shall be installed underground.
17. The fire access lanes shall be constructed to withstand the weight of a fire truck, but still provide green space and pedestrian access. The use of a turf-block material is recommended or another similar type material, approved by the Fire Department and Site Plan Review Committee.

18. 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.
19. Bicycle parking shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
20. An Emergency Vehicle Access from SR 59 onto the project site shall be granted prior to the issuance of a building permit. This access shall be constructed to meet Fire Department Standards. This access shall be gated to only allow emergency vehicle access and shall be equipped with a knox-box or other device approved by the Fire Department.
21. The property owner shall dedicate an additional 14 feet of right-of-way along SR 59 prior to the issuance of a building permit, unless otherwise approved by the City Engineer and City Land Surveyor, based on Caltrans requirements.
22. The drive aisles through the parking lot shall be posted as “no parking,” unless otherwise approved by the City Fire Department.
23. The applicant shall provide written documentation from PG&E agreeing to allow the proposed parking spaces within their easement area. This documentation shall be provided with the submittal of the first building permit that includes the parking in this area.
24. Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District and a demolition permit from the City of Merced Inspection Services Division if required.
25. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
26. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
27. All landscaping 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.

28. 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 the current drought conditions.
29. 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 parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
30. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. 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). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. No trees shall be required where there are carports with solar panels over the parking spaces. However, if all the parking spaces are covered by a carport with solar panels, then additional trees may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
31. The on-site landscape design shall include the use of xeriscape landscaping and comply with all California Building Code regulations or other applicable state and/or local requirements as well as Chapter 20.36 of the City's Zoning Ordinance.
32. The median between the driveways shall be provided with low-lying landscaping. Nothing in this area shall be taller than 2 ½ feet.
33. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.
34. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spillover onto adjacent properties.
35. All mechanical equipment shall be screened from public view.
36. 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's Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks.

37. The developer may install carports over some or all of the required parking spaces.
38. All signs shall comply with the requirements of the North Merced Sign Ordinance and Merced Municipal Code (MMC) Section 17.36.572 – Apartments or Condominiums. No free-standing A-Frame or sandwich board-type signs shall be allowed. All other moveable temporary signs are prohibited as well. Temporary banners may be installed on a building wall in compliance with the City's Sign Ordinance and after obtaining a Temporary Banner Permit from the Planning Department. A building permit shall be obtained for all permanent signs.

**CITY OF MERCED  
Planning Commission**

**Resolution #4014**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **Site Utilization Plan Revision #38 to Planned Development #1**, initiated by Merced Mall LTD, property owners. This application is a request to allow the renovation and expansion of the Merced Mall located at 851 W. Olive Avenue. The Project would increase the leasable retail area of the Merced Mall and construct a new movie theater at one of two possible locations within the project site. The project site consists of approximately 52 acres and is generally located on the north side of Olive Avenue between M and R Streets. The site has a General Plan designation of Regional/Community Commercial (RC) and is zoned Planned Development (P-D) #1; also known as Assessor’s Parcel No. 236-220-038; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through J of Staff Report #19-04; and,

**WHEREAS**, after reviewing the City’s Initial Study and Draft Environmental Determination, and fully 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 B) regarding Initial Study #18-02, and approval of Site Utilization Plan Revision #38 to Planned Development (P-D) #1, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner CAMPER, seconded by Commissioner PADILLA, and carried by the following vote:

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe and Chairperson Dylina

NOES: None

ABSENT: None

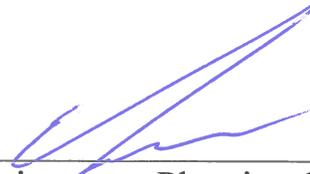
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 4014

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January 23, 2019

Adopted this 23<sup>rd</sup> day of January 2019



\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

n:\shared\planning\PC Resolutions\SUP Rev #38 to PD #1 (Merced Mall Expansion)

**Conditions of Approval**  
**Planning Commission Resolution #4014**  
**Site Utilization Plan #38 to Planned Development (PD) #1**

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan for Phase I (Attachment C of Planning Commission Staff Report #19-04), the Site Plan for either Phase II, Alternative 1, or Phase II, Alternative 2 (Attachments D and E of Planning Commission Staff Report #19-04), and the conceptual elevations found at Attachment F of Planning Commission Staff Report #19-04, except as modified by the conditions or as approved by the Site Plan Review Committee.
2. The following conditions apply to the new renovation areas of the Merced Mall and not to existing development that won't be modified under this renovation. Details to be worked out with Planning Staff.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with all applicable conditions previously approved for this site
5. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
6. Approval of the Site Utilization Plan Revision is subject to the applicant's entering into a written (legislative action) 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. 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 (with counsel selected by the City), 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
8. 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.
9. The project shall comply with all mitigation measures required by the mitigation monitoring program for Initial Study #18-02 (Exhibit B of Draft Planning Commission Resolution at Attachment H of Staff Report #19-04).

10. In compliance with Merced Municipal Code Section 20.20.020 Q, Site Plan Review approval is required prior to development to address conformance with the standards of Planned Development (P-D) #1.
11. Umbrellas, fencing, or other outdoor features used for the outdoor seating areas shall not include advertising for any specific business or brand and shall be uniform in color to complement the buildings.
12. The site shall be provided with pedestrian access between the buildings and connection to public ways (i.e., public sidewalks, streets, etc.).
13. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment. Pedestrian access shall be reviewed and approved by the Site Plan Review Committee prior to a building permit being issued.
14. All mechanical equipment shall be screened from public view.
15. 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's Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks.
16. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access shall be provided for all reconfigured parking areas. .
17. If changes are made to the site that would affect the current system used by the UC Merced Cat Tracks System and the Merced Transit System (The Bus), the developer shall work with UC Merced (Cat Tracks) and the Merced Transit System (The Bus) to determine the best location for public transit facilities. If relocated, the location of these facilities will be subject to review and approval by the Site Plan Review Committee.
18. Any driveways that are modified, added, or relocated shall comply with the City of Merced Design Standards for commercial driveways and are to be reviewed by the Fire Department as part of the review of the improvement plan submittals.

19. Any missing improvements along the project frontage shall be installed to meet City Standards. Any existing improvements that have been damaged or otherwise do not meet current City Standards shall be repaired or replaced to meet City Standards. This includes, but is not limited to, sidewalk, curb, gutter, street trees, and street lights.
20. Bicycle parking shall meet the minimum requirements of the California Green Building Code and MMC 20.38.080.
21. The project shall comply with the Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
22. All storm water shall be retained onsite and metered out to the City's storm water system in accordance with City Standards. The City Engineer shall approval final design of the storm drain system prior to construction.
23. All new utilities (including electrical lines) shall be installed underground.
24. A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire).
25. All landscaping shall comply with the Section 20.36.040 – Landscape and Sprinkler Plans, of the City's Zoning Ordinance in addition to all applicable state laws.
26. Full landscape and irrigation plans shall be submitted at the time of building permit application.
27. 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 parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
28. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards for any new or modified parking areas. 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). Trees shall be installed at a ratio of at least one tree for each six parking spaces. The trees may be located in planter areas that protrude into the parking areas, or which run along

the edge of the parking areas and shall be located to accommodate any carport or shade structures. Details regarding the above to be worked out with Planning Staff and/or approved by the Site Plan Review committee.).

29. When possible, mature existing trees should remain or be relocated on the site. Details to be worked out with Planning Staff.
30. As depicted in the elevations provided, landscape planters shall be placed throughout the courtyard area and along the sidewalk area. However, the planters shall not block access to the site, stores, or other facilities. All planters shall provide the necessary clearance to meet handicap accessibility requirements.
31. All landscaping on the site shall be maintained in a healthy and aesthetically pleasing manner.
32. Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District.
33. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
34. Construction activity shall only take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless otherwise approved by the Chief Building Official.
35. The project shall comply with all FEMA Flood Zone requirements and with the California 200-year Urban Level of Flood Protection requirements.
36. The premises shall remain clean and free of debris, weeds, and graffiti at all times.
37. All signs shall comply with the requirements of the North Merced Sign Ordinance. No free-standing A-Frame or sandwich board-type signs shall be allowed. All other moveable temporary signs are prohibited as well. Temporary banners may be installed on a building wall in compliance with the City's Sign Ordinance and after obtaining a Temporary Banner Permit from the Planning Department. A building permit shall be obtained for all permanent signs.
38. All businesses selling and/or serving alcoholic beverages shall comply with all regulations of the California Alcoholic Beverage

Control and the City of Merced. Any future bar, nightclub, cocktail lounge, or similar use would require a Conditional Use Permit. Any business less than 20,000 square feet in size selling alcoholic beverages for off-site consumption would also require a Conditional Use Permit.

n:shared:planning:PC Resolutions:SUP Rev#38 to PD #1 (Merced mall Expansion) Exhibit A

## **MITIGATION MONITORING AND REPORTING PROGRAM**

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Merced Mall Expansion Project (project). The MMRP, which is provided in Table A, lists mitigation measures recommended in the IS/MND for the project and identifies mitigation monitoring requirements. The MMRP must be adopted when the City Council makes a final decision on the project.

### **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**

As stated above, 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” ordinance (Merced Municipal Code [MMC] 19.28). The City’s program was developed in accordance with the advisory publication, Tracking CEQA Mitigation Measures Under AB 3180, from the Governor’s Office of Planning and Research.<sup>1</sup>

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

- 1) The requirements of the adopted mitigation monitoring program for the Merced Mall Expansion Project 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 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

<sup>1</sup> Governor's Office of Planning and Research. 1994. Tracking CEQA Mitigation Measures Under AB 3180. Sacramento, California.

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. Development Services 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.

### **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 initiate an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall require 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. 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 for the project. The columns within the tables are defined as follows:

Impact Statement:	Describes the potential impact that could result from implementation of the proposed project.
Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Monitoring Responsibility:	This column references any City department or public agency with which coordination is required to satisfy the identified mitigation measure.
Monitoring Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p><b>INITIAL STUDY IMPACTS AND MITIGATION MEASURES</b></p> <p><b>4.3 AIR QUALITY</b></p> <p>The project could violate air quality standards during the construction period.</p>	<p><b>AIR-1:</b> Consistent with SJVAPCD Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions), the following controls are required to be included as specifications for the proposed project and implemented at the construction site:</p> <ul style="list-style-type: none"> <li>● 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.</li> <li>● All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.</li> <li>● 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.</li> <li>● 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.</li> <li>● All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (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.)</li> <li>● 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.</li> </ul>	Development Services, Building Division	Contractors shall be responsible for including in contract specifications prior to issuance building permit and measures are implemented throughout duration of construction activities.	
<p><b>4.4 BIOLOGICAL RESOURCES</b></p> <p>The project would result in the removal of trees that could adversely affect nesting</p>	<p><b>BIO-1:</b> The following measures shall be implemented to reduce potential impacts to nesting birds:</p>	Development Services, Building	The applicant and contractors shall be	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
birds.	<ul style="list-style-type: none"> <li>If tree removal will occur during the nesting season (February 1 to August 31), a qualified biologist shall survey all suitable nesting habitat in the BSA for presence of nesting birds. This survey shall occur no more than 10 days prior to the start of construction. If no nesting activity is observed, work may proceed as planned. If an active nest is discovered, a qualified biologist shall evaluate the potential for the proposed project to disturb nesting activities. The evaluation criteria shall include, but are not limited to, the location/orientation of the nest in the nest tree, the distance of the nest from the BSA, and line of sight between the nest and the BSA.</li> <li>California Department of Fish and Wildlife (CDFW) shall be contacted to review the evaluation and determine if the project can proceed without adversely affecting nesting activity.</li> <li>If work is allowed to proceed after nesting activity has been observed, a qualified biologist shall be on-site daily during construction activities to monitor nesting activity. The biologist shall have the authority to stop work if it is determined the project is adversely affecting nesting activities.</li> </ul>	Division	responsible for implementing the measures throughout duration of construction activities.	
<p><b>4.5 CULTURAL RESOURCES</b></p> <p>Construction of the project could adversely affect unknown historic resources.</p>	<p>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.</p> <p>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</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p>Construction of the project could adversely affect unknown archaeological resources.</p>	<p>implementation. These additional studies may include, but are not limited to recordation, archaeological excavation, or other forms of significance evaluations.</p> <p>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:</p> <p>“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; flakes of, 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.”</p> <p>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.</p> <p>CUL-2: Implement Mitigation Measure CUL-1.</p>	<p>Development Services, Building Division</p>	<p>The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
Construction of the project could disturb unknown human remains.	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.	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	
<b>4.7 GREENHOUSE GAS EMISSIONS</b>				
The project would directly or indirectly generate greenhouse gas emissions.	<p>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:</p> <ul style="list-style-type: none"> <li>• The project applicant shall provide a pedestrian access network that internally links all uses and connects to existing external streets and pedestrian facilities.</li> <li>• 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.</li> <li>• 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, roundabouts, and speed humps.</li> </ul>	Development Services, Planning Division	The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p><b>4.9 HYDROLOGY AND WATER QUALITY</b></p> <p>The project could result in short-term construction-related water quality impacts.</p>	<ul style="list-style-type: none"> <li>The project shall provide for car sharing programs. Accommodations for such programs could include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.</li> <li>The project applicant shall plant trees to provide shade.</li> <li>The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.</li> </ul> <p>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.</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	
<p>The project could result in stormwater pollution.</p>	<p>HYDRO-2: To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. 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.</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.	
<p><b>4.12 NOISE</b></p> <p>Construction could result in a temporary or periodic increase in ambient noise levels in the project vicinity.</p>	<p>NOI-1: The project contractor shall implement the following measures during construction of the project:</p> <ul style="list-style-type: none"> <li>Equip all construction equipment, fixed or mobile, with</li> </ul>		The applicant and contractors shall be responsible for	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
	<p>properly operating and maintained mufflers consistent with manufacturers' standards.</p> <ul style="list-style-type: none"> <li>● Ensure that all general construction related activities are restricted to between the hours of 7:00 a.m. and 6:00 p.m. to avoid noise-sensitive hours of the day.</li> <li>● Designate a "disturbance coordinator" at the City who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler) and would determine and implement reasonable measures warranted to correct the problem.</li> </ul>		implementing the measures throughout duration of construction activities.	

Source: LSA (2019).

**CITY OF MERCED**  
**Planning Commission**

**Resolution #4015**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **Zoning Ordinance Amendment #19-01**, 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 Section 20.44.170 (“Commercial Cannabis Businesses”). This amendment would add a fifth permit for retail cannabis dispensaries to the allowable number within the City of Merced; the amendment also clarifies and modifies various parts of the permitting process for cannabis businesses; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through D of Staff Report #19-02; 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 #19-01, and approval of Zoning Ordinance Amendment #19-01, as set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner PADILLA, seconded by Commissioner HARRIS, and carried by the following vote:

AYES: Commissioners Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

NOES: Commissioners Camper and Drexel

ABSENT: None

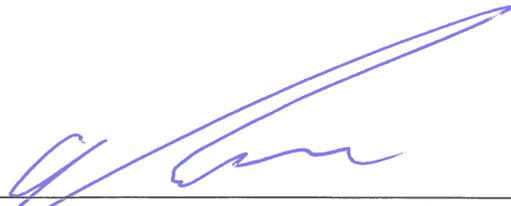
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 4015

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January 23, 2019

Adopted this 23<sup>rd</sup> day of January 2019

  
\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Draft Cannabis Ordinance with Proposed Changes

n:shared:planning:PC Resolutions:ZOA#19-01

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING SECTION 20.44.170, “REGULATION  
OF COMMERCIAL CANNABIS ACTIVITIES –  
COMMERCIAL CANNABIS BUSINESS PERMIT  
REQUIRED,” OF THE MERCED MUNICIPAL  
CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Section 20.44.170,  
“Regulation of Commercial Cannabis Activities – Commercial Cannabis Permit  
Required,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.44.170 - REGULATION OF COMMERCIAL  
CANNABIS ACTIVITIES - COMMERCIAL  
CANNABIS BUSINESS PERMIT REQUIRED**

**A. Zoning Compliance and Commercial Cannabis  
Business Permit Requirements**

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, 1-L and 1-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

**EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #4015**

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – ‘X’, or permitted – ‘P’. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1							Additional Specific Use Standards
	Land Use Classification [4][5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(k)

## **Footnotes**

1. Only five (5) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced at any one time.
2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.
3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).
4. If listed as ‘Permitted’ in a specific zone above, then that use is also ‘Permitted’ in Planned Development (P-0) zones that have the equivalent General Plan land use designation as that zone.
5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f).

**Land Use Classifications:**

Greenhouse, Commercial A - Permitted cultivation area:  
0 to 5,000 square feet

Greenhouse, Commercial B - Permitted cultivation area:  
5,001 to 10,000 square feet

Greenhouse, Commercial C - Permitted cultivation area:  
10,000 to 22,000 square feet

Greenhouse, Commercial D - Permitted cultivation area:  
22,000 square feet

**B. Cultivation of Cannabis for Personal Use in Residential Zones**

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(j) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to

deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO<sub>2</sub>, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic,

vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

### **C. Definitions**

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **‘Applicant’** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **‘Cannabis’** means all parts of the Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from marijuana. ‘Cannabis’ also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, ‘cannabis’ does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **‘Cannabis waste’** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **‘Canopy’** means all of the following:

a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **‘City’** means the City of Merced.

6. **‘Commercial cannabis business permit (CCBP)’** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **‘Commercial cannabis activity’** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **‘Commercial vehicle’** means a vehicle as defined in Vehicle Code section 260.

9. **‘Concentrated cannabis product’** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **‘Cultivation’** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **‘Customer’** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **‘Day Care Center’** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities,

and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **‘Delivery’** means the commercial transfer of marijuana or marijuana products to a customer. ‘Delivery’ also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

14. **‘Delivery employee’** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **‘Dispensary’** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **‘Display’** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **‘Display case’** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **‘Distribution’** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **‘Edible cannabis product’** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **‘Fully Enclosed and Secure Structure’** means a fully-enclosed space within a building that complies with the California Building Code (‘CBSC’), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **‘Free sample’** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **‘Greenhouse’** means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a ‘Fully Enclosed and Secure Structure’ as defined above in 20.44.170(C), Subsection 20.

23. **‘Indoors’** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 20.
24. **‘License’** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.
25. **‘Limited-access area’** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.
26. **‘Medical’** or **‘Medicinal’** have the same meaning under the terms of this ordinance.
27. **‘Medical cannabis goods’** means cannabis, including dried flower, and manufactured cannabis products.
28. **‘Medical cannabis patient’** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.
29. **‘Manufacturer’** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.
30. **‘Manufacturing’** or **‘manufacturing operation’** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products.

Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

31. **‘Nonvolatile solvent’** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.

32. **‘Operating hours’** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.

33. **‘Owner’** or **‘Ownership interest’** means an interest held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an ‘owner’ of the commercial cannabis business.

34. **‘Package’** and **‘Packaging’** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. ‘Package’ and ‘packaging’ does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

35. **‘Patient or qualified patient’** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

36. **‘Person’** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust,

receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

37. **‘Pest’** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

38. **‘Physician's recommendation’** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

39. **‘Premises’** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

40. **‘Pre-roll’** means dried cannabis flower rolled in paper prior to retail sale.

41. **‘Primary Caregiver’** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

42. **‘Private security officer’** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.

43. **‘Publicly owned land’** means any building or real property that is owned by a city, county, state, federal, or other government entity.

44. **‘Purchase’** means obtaining cannabis goods in exchange for consideration.

45. **‘Purchaser’** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

46. **‘Quarantine’** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.
47. **‘Retail area’** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.
48. **‘School’** means any site upon which full-time instruction in any of grades K through 12 is provided. ‘School’ does not include any private site in which education is primarily conducted in private homes.
49. **‘Security monitoring’** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.
50. **‘Selection Panel’** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.
51. **‘Sell,’ ‘sale,’ and ‘to sell’** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.
52. **‘Sublet’** means to lease or rent all or part of a leased or rented property.
53. **‘State’** means the State of California.

54. **‘Testing Laboratory’** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

55. **‘Vehicle alarm system’** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

56. **‘Volatile solvent’** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

57. **‘Wholesale’** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

58. **‘Youth Center’** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

#### **D. Compliance with State and Local Licensing Requirements**

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City

of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

#### **E. General Provisions for Commercial Cannabis Activities in the City of Merced**

##### **1. Commercial Cannabis Business Permit Required**

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

- i. Cultivation
- ii. Distribution
- iii. Manufacturing

iv. Retail sales (Dispensary)

v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

i. A felony offense listed in California Health and Safety Code Section 11590.

- ii. A felony offense listed in California Penal Code Section 667.S(c).
- iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.
- iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.
- v. A felony conviction involving fraud, deceit, or embezzlement.
- vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7), and does not run with the land or with the business.

## 2. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either

hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

j. Proof of insurance.

### 3. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not

voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted to the City. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter

20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed 'abandoned' and the permit shall be forfeited. A

business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an 'A' rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's 'doing business as' name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. Said notification shall be addressed to the Director of Development Services or his designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

i. Emergency action response planning as necessary

- ii. Employee accident reporting and investigation policies
- iii. Fire prevention
- iv. Hazard communication policies, including maintenance of material safety data sheets
- v. Materials storage and handling policies
- vi. Personal protective equipment policies
- vii. Operation manager contacts
- viii. Emergency responder contacts
- ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

**F. Additional Regulations for Dispensary and Retail Sales of Cannabis**

1. Only five (5) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.

3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.
4. Restrooms shall remain locked during business hours and not open to the public.
5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.
6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.
7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.
8. Security guards are permitted, but not mandated, to carry firearms.
9. All cannabis products available for sale shall be securely locked and stored
10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.
11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical

cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 9 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: ‘Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited.’

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis.

A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business

premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive-through facility.

### **G. Additional Regulations for Commercial Cannabis Delivery Services**

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of \$1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed \$3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

a. Name and address of the licensed dispensary;

b. The name of the employee who delivered the order;

- c. The date and time the delivery request was made;
- d. The complete delivery address;
- e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;
- f. The total amount paid for the delivery including any fees or taxes; and
- g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the ‘Prohibited Conduct Involving Marijuana and Marijuana Products’ contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

#### **H. Additional Requirements for Manufactured Cannabis Businesses**

- 1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.
- 2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.
- 3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis

manufacturing including Health and Safety Code 11362.775 and as it may be amended.

4. Inspections by the City Fire Chief or his designee may be conducting anytime during the business's regular business hours.

5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.

6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. \_Outdoor manufacturing of cannabis is expressly prohibited.

### **I. Additional Requirements for Cannabis Cultivation Businesses**

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.

2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.

3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.
5. All outdoor lighting used for security purposes shall be shielded and downward facing.
6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.
7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

**J. Additional Requirements for Cannabis Testing Laboratory Businesses**

1. A licensed cannabis testing facility shall comply with all State regulations.
2. Any cannabis testing facility shall maintain all certifications required by the State.
3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.
4. Inspections by the City Fire Chief or his designee may be conducted anytime during the business's regular business hours.

**K. Additional Requirements for Cannabis Distribution Businesses**

1. A licensed cannabis distribution facility shall comply with all State regulations.
2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.
3. Inspections by the City Police Chief or his designee may be conducted anytime during the business's regular business hours.
4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.
5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:
  - a. The manufacturer or cultivator's name and license number;

- b. The date of entry into the distributor's storage area;
- c. The unique identifiers and batch number associated with the batch;
- d. A description of the cannabis goods with enough detail to easily identify the batch; and
- e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform

to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,
  - a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and
  - b. All loading and unloading activities shall take place within the secured fenced area required above.

**L. Commercial Cannabis Business Permit Selection Process**

**1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)**

- a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.
- b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.
- c. The City of Merced has established a merit based scoring system to objectively award permits as

described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the ‘Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales’ and shall be notified in writing that they are a ‘Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales’. The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the ‘Qualified Applicant List for Dispensaries/Retail Sales’ and entered into the Phase 2 review process. These requirements include but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period.
- iii. Application forms are filled out completely;
- iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 - Final Review and Scoring.

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
  - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
  - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
  - c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be

deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District;
  - b. The location of the cannabis business meets the distance requirements from sensitive uses;
  - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
  - d. No zoning violations exist on the property;
  - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
  - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.
- iv. The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of

Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

- a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until

September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019 and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20, 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed 180 days from the date the last available Commercial Cannabis Business Permit-Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have

elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit-  
Dispensaries/Retail Sales Selection - Phase 2 – Planning  
Commission

The Planning Commission will review the Commercial Cannabis Business Permit- Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit- Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

**2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)**

a. The Commercial Cannabis Business Permit- All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the ‘Qualified Commercial Cannabis Business Application List-All Other Cannabis Businesses’ and shall be notified in writing that they are a ‘Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses’. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the ‘Qualified Application List for All Other Cannabis Businesses’.

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

e. **Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 1 - Initial Review**

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the ‘Qualified Applicant List for All Other Cannabis Businesses’ and entered into the Phase 2 review process. These requirements include, but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period;
- iii. Application forms are filled out completely;
- iv. Business Owner(s) I Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

f. **Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 - Final Review**

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
  - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
  - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
  - c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a

building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District;
  - b. The use meets the distance requirements from sensitive uses;
  - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
  - d. No zoning violations exist on the property;
  - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
  - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.
- iv. The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and reviewing the foregoing information will make a

recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

#### 4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted,

as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any 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 within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

## 5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance;
- ii. Violates any other provision of this section or any City of Merced or State

law, statute, rule or regulation relating to the business's permitted activity;

- iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee;
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;
- vi. Violates or fails to comply with the terms and conditions of the permit; or
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

#### 6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar

days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

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 within thirty (30) calendar days of receiving the appeal.
- ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.
- 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 within thirty (30) calendar days of receiving the appeal.
- c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- d. Any interested person may appear and be heard regarding the appeal.
- e. A matter being heard on appeal may be continued for good cause.
- f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de nova review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

7. Modifications to Commercial Cannabis Business Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

#### 8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance.
- ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity.

- iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
- vi. Violates or fails to comply with the terms and conditions of the permit.
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

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 within (thirty) 30 days of receiving the appeal.
- ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.
- 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 within thirty (30) calendar days of receiving the appeal.
  - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

- d. Any interested person may appear and be heard regarding the appeal.
- e. A matter being heard on appeal may be continued for good cause.
- f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

**M. Limitations on the City's Liability**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

- 1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;

2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;
3. Name the city as an additionally insured on all City required insurance policies;
4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and
5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

**N. Enforcement**

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.
2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:
  - a. A discrepancy of more than \$1,000 in inventory over a period of 24 hours or \$3,000 over period of 7 days.
  - b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the

destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

## **O. Fees and Taxes**

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. **Initial Application Fees.** The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).
2. **Application Renewal Fees.** The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.
3. **Business License Fee.** The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.
4. **Commercial Cannabis Regulatory Fee.** The Business Owner shall pay an annual regulatory fee ('Regulatory Fee') to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.
5. **All required taxes including sales and use taxes, business, payroll etc.**

6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced.”

**SECTION 2. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 3. 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 4. 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 \_\_\_\_\_, 2019, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2019, by the following called vote:

**AYES: Council Members:**

**NOES: Council Members:**

**ABSTAIN: Council Members:**

**ABSENT: Council Members:**

**APPROVED:**

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**Mayor**

**ATTEST:  
STEVE CARRIGAN, CITY CLERK**

**BY:** \_\_\_\_\_  
**Assistant/Deputy City Clerk**

**(SEAL)**

**APPROVED AS TO FORM:**

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**City Attorney**

**Date**



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.3.**

Meeting Date: 3/4/2019

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*Report Prepared by: Jennifer Levesque, Deputy City Clerk, City Clerk's Office*

**SUBJECT:** Information Only - Arts and Culture Advisory Commission Meeting Minutes of January 10, 2019

### **RECOMMENDATION**

For information only.

### **ATTACHMENTS**

1. ACA Minutes 01-10-2019



# CITY OF MERCED

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

## Minutes

### Arts and Culture Advisory Commission

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Thursday, January 10, 2019

3:00 PM

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#### 1. PLEDGE OF ALLEGIANCE

#### 2. CALL TO ORDER

**Clerk's Note:** The Arts and Culture Advisory Commission was called to order at 3:05 PM.

#### 3. ROLL CALL

**Present:** 6 - Colton Dennis, Dob Francise, Rob Hypes, Monika Modest, Monika Saini and Diana Odom Gunn

**Absent:** 0

Present Ex-Officio Members:

Kim GARNER  
Harley HERMOSILLO  
Anthony MARTINEZ  
Patricia PRATT

#### 4. PUBLIC COMMENT

There were no comments from the Public.

#### 5. ORGANIZATION OF COMMISSION

##### 5.1. **SUBJECT:** Selection of a New Chair and Vice Chair

##### REPORT IN BRIEF

Yearly selection of Chair and Vice Chair.

**A motion was made by Member Hypes, seconded by Member Modest, to appoint Member Dennis as Chair. The motion carried by the following vote:**

**Aye:** 5 - Member Francise  
Member Hypes  
Member Modest  
Member Saini  
Member Odom Gunn

No: 0

Absent: 0

Abstain: 1 - Member Dennis

A motion was made by Member Francise, seconded by Member Hypes, to appoint Member Gunn as Vice-Chair. The motion carried by the following vote:

Aye: 5 - Member Dennis  
Member Francise  
Member Hypes  
Member Modest  
Member Odom Gunn

No: 0

Absent: 0

Abstain: 1 - Member Saini

5.2. **SUBJECT: Selection of Commissioner Term Lengths**

**REPORT IN BRIEF**

The members of the Arts and Culture Advisory Commission shall, on the first meeting following the establishment of the commission, draw lots to determine the three (3) initial members that will serve for a term of two (2) years.

Assistant City Clerk John TRESIDDER explained the length of terms and the process of selecting terms for each member.

Members drew numbers out of a box to determine their term lengths. The term length for each Member is as follows:

Members FRANCISE, SAINI, and HYPES four year terms.

Members GUNN, MODEST, and DENNIS two year terms.

**6. REPORTS**

6.1. **SUBJECT: Discussion on the Arts and Culture Advisory Commission Roles and Priorities**

**REPORT IN BRIEF**

Members will discuss the roles and priorities of the Arts and Culture Advisory Commission in order to facilitate and identify future projects and

agenda items.

Assistant City Manager gave a slide show presentation on the Arts and Culture Advisory Commission Roles and Priorities.

Members discussed the direction they want to take the commission and their priorities.

Staff agreed to bring priorities forward on future agendas for deeper discussion on each.

**6.2.**

**SUBJECT:** Acceptance of Grant Award from PG&E Corporation Foundation in the Amount of \$3,000 and Appropriation of Funds for Use by the City's Arts and Culture Advisory Commission

**REPORT IN BRIEF**

The City Council accepted a grant award from PG&E Corporation Foundation in the amount of \$3,000 and appropriated the funds for use by the City's Arts and Culture Advisory Commission.

**RECOMMENDATION**

**Arts and Culture Advisory Commission** - Adopt a motion accepting the grant award from PG&E Corporation Foundation in the amount of \$3,000 for future projects to be determined.

Members discussed various uses of the grant money.

**A motion was made by Member Odom Gunn, seconded by Member Saini, to accept and appropriate the grant money and to direct staff to bring back options and choices in establishing an Arts and Culture District and cost of festivals. The motion carried by the following vote:**

**Aye:** 6 - Member Dennis  
Member Francise  
Member Hypes  
Member Modest  
Member Saini  
Member Odom Gunn

**No:** 0

**Absent:** 0

**7. BUSINESS**

7.1. Request to Add Item to Future Agenda

Assistant City Clerk John TRESIDDER explained the process of adding an item to a future agenda.

Chairperson DENNIS requested to add an item to discuss the development of a mission statement.

**8. ADJOURNMENT**

**Clerk's Note:** The Arts and Culture Advisory Commission meeting was adjourned at 4:35 PM.

**A motion was made by Member Francise, seconded by Member Hypes, to adjourn the meeting. The motion carried by the following vote:**

**Aye:** 6 - Member Dennis  
Member Francise  
Member Hypes  
Member Modest  
Member Saini  
Member Odom Gunn

**No:** 0

**Absent:** 0

By:



Jennifer Levesque  
Deputy City Clerk

Approved:



Colton Dennis  
Chairperson

**Clerk's Note:** In accordance with Council's prior agreement to waive the reading of ordinances and resolutions unless specifically requested to do so, the Clerk was directed to read summaries.



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.4.**

Meeting Date: 3/4/2019

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*Report Prepared by: Kirkland Greene, Records Clerk II*

**SUBJECT:** Information-Only Contracts for the Month of February 2019

### REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

### AUTHORITY

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted FY 2018-2019 threshold of \$69,833.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2018-2019 threshold of \$31,000.00, the contracts listed on the attached table were entered into by the City.

### ATTACHMENTS

1. "Information-Only" Contracts Table for February 2019

## Exhibit 1 – Table of Contracts

3/4/2019 City Council Meeting

<b>Department/Division</b>	<b>Vendor</b>	<b>Purpose/Location</b>	<b>Amount</b>
1201 – Recreation and Parks	Park Rx America	Memorandum of Understanding (MOU) to Establish an Ongoing Relationship With the City to Supply Accurate, Reliable, and Prescribable Information on the City's Parks to Healthcare Providers for the Purpose of Prescribing Visits to City Parks.	(No funds.)
0803 – Engineering	Technicon Engineering Services, Inc.	Agreement for Professional Services to Provide Geotechnical Testing Services in Connection With a Project to Construct a New Well Pump Station at Well Site No. 21 (Project No. 113026).	\$15,505.00
0403 – Information Technology	CVIN, LLC (DBA: Vast Networks)	Repair of fiber optic cable at the Wastewater Treatment Plant (WWTP) damaged by MID contractor on December 28, 2018. (Statement of Services, PO #133138.)	\$22,865.00
1301 – Housing	RSG, Inc.	Agreement for Professional Services to Provide Assistance With Housing Successor Agency (HSA) Properties in Evaluating Options to Expend Affordable Housing Monies in the Low and Moderate Income Housing Asset Fund (LMIHAF) and to Develop a Disposition Strategy.	\$25,905.00

*Copies of all of the contracts listed above are available in the City Clerk's Office.*



**ADMINISTRATIVE REPORT**

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**Agenda Item I.5.**

Meeting Date: 3/4/2019

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**SUBJECT:** Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of February 4, 2019

**REPORT IN BRIEF**

Official adoption of previously held meeting minutes.

**RECOMMENDATION**

**City Council/Public Financing and Economic Development/Parking Authority** - Adopt a motion approving the meeting minutes of February 4, 2019.

**ALTERNATIVES**

1. Approve as recommended; or,
2. Approve, subject to amendments.

**ATTACHMENTS**

1. Minutes of February 4, 2019



# CITY OF MERCED

City Council Chamber  
Merced Civic Center  
2nd Floor  
678 W. 18th Street  
Merced, CA 95340

## Minutes

### City Council/Public Finance and Economic Development Authority/Parking Authority

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Monday, February 4, 2019

6:00 PM

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#### A. CLOSED SESSION ROLL CALL

**Present:** 7 - Mayor Pro Tempore Anthony Martinez, Mayor Mike Murphy, Council Member Kevin Blake, Council Member Jill McLeod, Council Member Matthew Serratto, Council Member Delray Shelton, and Council Member Fernando Echevarria

**Absent:** 0

#### B. CLOSED SESSION

Mayor MURPHY called the Closed Session to order at 5:02 PM.

**B.1.** **SUBJECT:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION -  
Title: Finance Officer; Authority: Government Code Section 54957

**B.2.** **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED  
LITIGATION Significant Exposure to Litigation pursuant to Government  
Code section 54956.9(d)(2): (1) case

**Clerk's Note:** Council adjourned from Closed Session at 6:00 PM.

#### C. CALL TO ORDER

Mayor MURPHY called the Regular Meeting to order at 6:03 PM.

C.1. Invocation - Joel Dorman, First Baptist Church

The invocation was delivered by Joel DORMAN from First Baptist Church.

C.2. Pledge of Allegiance to the Flag

Council Member MCLEOD led the Pledge of Allegiance to the Flag.

#### D. ROLL CALL

**Present:** 7 - Mayor Pro Tempore Anthony Martinez, Mayor Mike Murphy, Council Member Kevin Blake, Council Member Jill McLeod, Council Member Matthew Serratto, Council Member Delray Shelton, and Council Member Fernando Echevarria

**Absent:** 0

D.1. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority and the Public Financing and Economic Development Authority. City Council members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority and the Public Financing and Economic Development Authority receive no compensation.

## **E. REPORT OUT OF CLOSED SESSION**

There was no report.

## **F. CEREMONIAL MATTERS**

F.1.                   **SUBJECT: Proclamation - Black History Month**

### **REPORT IN BRIEF**

Mayor Murphy will present the proclamation to Allen Brooks, President, NAACP Merced Branch 1047.

Mayor MURPHY presented the Black History Month proclamation to Allen BROOKS, President of the NAACP Merced Branch 1047.

## **G. WRITTEN PETITIONS AND COMMUNICATIONS**

There were none.

## **H. ORAL COMMUNICATIONS**

Stephanie CHAVEZ, Merced - spoke on the housing in Merced.

Rick WENDLING, Merced - spoke on the landscaping on M Street and placing a speed bump on Briggs Lane.

Erynn RAMOS, Merced - spoke on Expanding Her Horizons event.

Lyle ALLEN, Merced, Habitat for Humanity of Merced County - spoke on a project that the Habitat for Humanity of Merced County is working on.

Karen ANN, Merced - spoke on an ongoing issue and various topics.

## **I. CONSENT CALENDAR**

Items I.6. Award Bid and Approval of Agreement with Rolf Construction Company in the Amount of \$351,922 for City Project No. 118027 - CDBG Rivera Bike Path - G Street Ramps; and Approval of Amended Interdepartmental Cooperative Agreement Between the City of Merced Engineering and Housing Division and I.10. Approval of a Professional

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Services Agreement for the Preparation of the 5-Year Update of the Public Facilities Financing Plan and Impact Fee Program with Economic and Planning Systems, Inc. in the Amount of \$85,000; were pulled for separate consideration.

### Approval of the Consent Agenda

**A motion was made by Council Member Blake, seconded by Council Member Serratto, to approve the Consent Agenda. The motion carried by the following vote:**

**Aye:** 7 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 0

**Absent:** 0

**I.1. SUBJECT: Reading by Title of All Ordinances and Resolutions**

**REPORT IN BRIEF**

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

**RECOMMENDATION**

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

**This Consent Item was approved.**

**I.2. SUBJECT: Information Only-Planning Commission Minutes of November 7 and 14, 2018**

**RECOMMENDATION**

For information only.

**This Consent Item was approved.**

**I.3. SUBJECT: Information-Only Contracts for the Month of January 2019**

**REPORT IN BRIEF**

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

**AUTHORITY**

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted FY 2018-2019 threshold of \$69,833.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2018-2019 threshold of \$31,000.00, the contracts listed on the attached table were entered into by the City.

**This Consent Item was approved.**

**I.4.**

**SUBJECT:** Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of January 7, 2019

**REPORT IN BRIEF**

Official adoption of previously held meeting minutes.

**RECOMMENDATION**

**City Council/Public Financing and Economic Development/Parking Authority** - Adopt a motion approving the meeting minutes of January 7, 2019.

**This Consent Item was approved.**

**I.5.**

**SUBJECT:** Accept and File Community Facilities District (CFD) Nos. 2003-1 (Bellevue Ranch East), 2003-2 (Services), 2005-1 (Bellevue Ranch West), 2006-1 (Moraga of Merced) Annual Disclosure Reports For Fiscal Year 2017-2018

**REPORT IN BRIEF**

The Continuing Annual Disclosure Reports contain certain CFD information required to be filed annually by the City per Security and Exchange Commission (SEC) rule 15c2-12(b) and Government Code sections 50075-50077 and 53410-53412.

**RECOMMENDATION**

**City Council** - Adopt a motion accepting and filing the CFD Annual Disclosure Reports For Fiscal Year 2017-2018 for CFD Nos. 2003-1 (Bellevue Ranch East), 2003-2 (Services), 2005-1 (Bellevue Ranch West), 2006-1 (Moraga of Merced).

**This Consent Item was approved.**

- I.7. **SUBJECT:** Acceptance and Appropriation of Grant Funding in the Amount of \$3,000 from FY 2019 Merced County First Five Mini Grant for the Applegate Park Zoo's Lights Before Christmas Event

**REPORT IN BRIEF**

Considers accepting and appropriating grant funding in the amount of \$3,000 from Merced County First Five for the Applegate Park Zoo's Lights Before Christmas event.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Accepting grant funds from Merced County First Five and increasing revenue in account 024-1254-360-02-01 - Zoo Special Events (Contributions and Donations) in the amount of \$3,000; and,

B. Appropriating \$2,425 to account 024-1205-542-29-00 - Community Service Zoo (Supplies and Services), and \$575 to account 024-1254-542-29-00 - Zoo Special Events (Supplies and Services); and,

B. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

**This Consent Item was approved.**

- I.8. **SUBJECT:** Acceptance and Appropriation of Grant Funding in the Amount of \$3,000 from FY 2019 Merced County First Five Grant for Tiny Tots Santa's Workshop, Valentine's Day and Earth Day

**REPORT IN BRIEF**

Considers accepting and appropriating grant funding in the amount of \$3,000 from Merced County First Five for the following community events; Santa's Workshop, Valentine's Day and Earth Day.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Accepting grant funds from Merced County First Five and increasing revenue in account 024-1226-360-02-01 - Creative Skills-Contributions and Donations in the amount of \$3,000; and,

B. Appropriating the same to account 024-1226-542-29-00 - Creative Skills-Supplies and Services; and,

C. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

**This Consent Item was approved.**

**I.9.**

**SUBJECT:** Approval of Street Closure Request 18-24 by Velo Promo, LLC for the 30th Original Merced Criterium Bicycle Race on February 24, 2019 from 6:00 a.m. to 5:00 p.m. for the Area of West 18th Street to West 21st Street Between M and N Streets

**REPORT IN BRIEF**

Considers approving a request for use of City streets for the purpose of a bicycle race on February 24, 2019 from 6:00 a.m. to 5:00 p.m. The road closure area is from West 18th Street between M and N Streets, West 19th Street between M and N Streets, West 20th Street between M and N Streets, and West 21st Street between M and N Streets (including the Courthouse loop).

**RECOMMENDATION**

**City Council** - Adopt a motion approving the request by Velo Promo, LLC, to close West 18th Street between M and N Streets, West 19th Street between M and N Streets, West 20th Street between M and N Streets, and West 21st Street between M and N Streets (including Courthouse loop) on Sunday, February 24, 2019, from 6:00 a.m. to 5:00 p.m., subject to the conditions listed in the body of this report.

**This Consent Item was approved.**

**I.6.**

**SUBJECT:** Award of Bid and Approval of Agreement with Rolfe Construction Company in the Amount of \$351,922 for City Project No. 118027 - CDBG Rivera Bike Path-G Street Ramps; and Approval of Amended Interdepartmental Cooperative Agreement Between the City of Merced Engineering Division and Housing Division

**REPORT IN BRIEF**

Considers awarding a bid and approving an agreement in the amount of \$351,922 with Rolfe Construction Company for the Community Development Block Grant (CDBG) Rivera Bike Path-G Street Ramps; and approve amended Interdepartmental Cooperative Agreement between the City of Merced Engineering and Housing Divisions.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Awarding a bid and approving an agreement with Rolfe Construction Company in the amount of \$351,922 for the Community Development Block Grant (CDBG) Rivera Bike Path-G Street Ramps, Project No. 118027; and,

B. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents, to approve change orders not to exceed \$35,192.20 (10% of the project cost); and,

C. Approving an amended Interdepartmental Cooperative Agreement listing grant award from \$284,633 to \$315,417 between the City of Merced Engineering and Housing Divisions; and,

D. Authorizing the Finance Officer to make the necessary budget adjustments.

Mayor Pro Tempore MARTINEZ pulled this item to request a staff report.

Public Works Director Ken ELWIN briefly explained the scope and funding for the project.

MART and Mr. ELWIN discussed the ADA ramps, sidewalk and bike path improvements, and project timeline.

**A motion was made by Mayor Pro Tempore Martinez, seconded by Council Member Blake, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 0

**Absent:** 0

**I.10.**

**SUBJECT:** Approval of a Professional Services Agreement for the Preparation of the 5-Year Update of the Public Facilities Financing Plan and Impact Fee Program with Economic and Planning Systems, Inc. in the Amount of \$85,000

**REPORT IN BRIEF**

Considers awarding a professional services agreement to Economic &

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Planning Systems, Inc., in the amount of \$85,000 to prepare the 5-year update of the City's Public Facilities Financing Plan and Impact Fee Program and appointing a City Council Sub-committee.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving the Professional Services Agreement with Economic & Planning Systems, Inc., in the amount of \$85,000.00 for preparation of the 5-year update of the City's Public Facilities Financing Plan and Impact Fee Program; and,

B. Authorizing the City Manager or the Assistant City Manager to execute the documents; and,

C. Appointing a Council sub-committee of 2-3 members to assist in the PFFP review.

Council Member SERRATTO pulled this item to select a sub-committee for the preparation of the 5-year update of the Public Facilities Financing Plan and Impact Fee Program with Economic and Planning Systems.

**A motion was made by Council Member Blake, seconded by Mayor Pro Tempore Martinez, to appoint Mayor Murphy and Mayor Pro Tempore Martinez to the Sub-committee and approve the agreement. The motion carried by the following vote:**

**Aye:** 7 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 0

**Absent:** 0

**J. REPORTS**

**J.1.**

**SUBJECT:** Adoption of Resolution Allowing the Submittal of a Joint Application with the Richman Group of California Development Company, LLC (Richman Group), and the Central Valley Coalition for Affordable Housing (CVCAH) for the Affordable Housing and Sustainable Communities (AHSC) Program to Obtain Loan and Grant Funding for the Construction of a 119 Unit Affordable Housing Project at 1137 B Street in Merced, California and Approval and Execution of an Enforceable Funding Commitment Agreement, a First Amendment to the Exclusive Negotiating Agreement, and Memorandum of Understanding Between the City, CVCAH and the Richman Group, and

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Certification of the National Environmental and Protection Agency  
Environmental Assessment

**REPORT IN BRIEF**

Considers Resolution allowing the submittal of a joint application with the Richman Group of California Development Company, LLC (Richman Group), and the Central Valley Coalition for Affordable Housing (CVCAH) for the Affordable Housing and Sustainable Communities (AHSC) Program to obtain loan and grant funding for the construction of a 119 unit Affordable Housing Project at 1137 B Street in Merced, California and approval and execution of an Enforceable Funding Commitment Agreement, a First Amendment to the Exclusive Negotiating Agreement, and Memorandum of Understanding between the City, CVCAH and the Richman Group, and Certification of the National Environmental and Protection Agency Environmental Assessment.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2019-06**, a Resolution of the City Council of the City of Merced, California, authorizing application for the Affordable Housing and Sustainable Communities Program; and,
- B. Approving the enforceable funding commitment agreement between the City of Merced, Central Valley Coalition for Affordable Housing, and Richman Group of California Development Company LLC, a Limited Liability Company; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents to submit the AHSC Program application as a joint applicant with the Richman Group and the Central Valley Coalition for Affordable Housing; and,
- D. Authorizing the City Manager or the Assistant City Manager to sign the National Environmental and Protection Agency Environmental Assessment (EA) for the Childs and B Street project and sign the Authority to Use Grant Funds as the City's Certifying Officer; and,
- E. Funding the Childs Court Apartments as submitted. The amount awarded to applicants may not exceed \$1,200,000 of Low-Moderate Income Housing Asset funding for this development and shall be included

as part of the 2018 and 2019 HUD Annual Action Plans; and,

F. Funding the Childs Court Apartments as submitted. The amount awarded to applicants may not exceed \$2,000,000 of Community Development Block Grant (CDBG) funding for this development and shall be included as part of the 2019, 2020, 2021, and 2022 HUD Annual Action Plans; and,

G. Funding the Childs Court Apartments as submitted. The amount awarded to applicants may not exceed \$1,910,000 of HOME Investment Partnership Program (HOME) funding for this development and shall be included as part of the 2018, 2019, 2020, 2021, 2022, and 2023 HUD Annual Action Plans; and,

H. Approving the First Amendment to the Exclusive Negotiating Agreement between the City of Merced, the Richman Group of California Development Company, LLC and the Central Valley Coalition for Affordable Housing; and,

I. Approving the AHSC Implementation and Cooperation Memorandum of Understanding between the City of Merced, the Richman Group of California Development Company, LLC. and the Central Valley Coalition for Affordable Housing.

Housing Program Supervisor Mark HAMILTON gave a slide show presentation on the Childs and B Street Housing Project.

Council and Mr. HAMILTON discussed General Fund impact and the City's financial commitment to the project.

Council Member MCLEOD stated her support for the Childs and B Street housing project.

Diana ODOM GUNN, Merced Downtown Neighborhood Association - stated her support for this project.

Council Member BLAKE and Richmond Group representative Rick WESTBERGE discussed who will benefit from the project.

City Attorney Phaedra NORTON requested flexibility on the Memorandum of Understanding.

**A motion was made by Council Member McLeod, seconded by Council Member Serratto, approving the recommended action and to include the flexibility on the Memorandum of Understanding. The motion carried by the following vote:**

**Aye:** 7 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 0

**Absent:** 0

## K. BUSINESS

**K.1.** **SUBJECT:** Request for the City Council to Consider Changing the Date of the North Merced Town Hall Meeting at Rivera Middle School to February 27, 2019

### REPORT IN BRIEF

Request that Council consider changing the date of the North Merced Town Hall meeting at Rivera Middle School to February 27, 2019, due to a scheduling conflict.

### RECOMMENDATION

Provide staff direction on the date of the North Merced Town Hall Meeting at Rivera Middle School.

Assistant to the City Manager Mike CONWAY briefly discussed possibly changing the North Merced Town Hall Date to February 27, 2019.

Mayor MURPHY stated that he had a conflict on the original date on February 12th and requested to move it to February 27th.

**A motion was made by Council Member Blake, seconded by Council Member McLeod, to move the North Merced Town Hall date to February 27, 2019. The motion carried by the following vote:**

**Aye:** 7 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 0

**Absent:** 0

**K.2.** **SUBJECT:** Appointment - Regional Airport Authority

### REPORT IN BRIEF

Consider appointing Cuauhtémoc Diaz to the Regional Airport Authority.

**RECOMMENDATION**

**City Council** - Adopt a motion appointing Cuauhtémoc Diaz to serve as a member of the Regional Airport Authority, to a seat with a term expiration of July 1, 2021.

Assistant City Clerk John TRESIDDER briefly discussed the vacancy of the Regional Airport Authority.

**A motion was made by Council Member Blake, seconded by Mayor Pro Tempore Martinez, to appoint Cuauhtemoc Diaz to the Regional Airport Authority. The motion carried by the following vote:**

**Aye:** 7 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 0

**Absent:** 0

K.3. Request to Add Item to Future Agenda

No items were add to a future agenda.

K.4. City Council Comments

Council Member ECHEVARRIA reported on attending the Report of Our Schools event, the Merced County ACT Coalition event.

Mayor Pro Tempore MARTINEZ reported on attending the Annual Explorer event and the Daughters of the American Revolution event.

Council Member SERRATTO reported on attending the Youth Council Park Cleanup event.

Mayor MURPHY reported on attending the US Conference of Mayors in Washington D.C., the Martin Luther King Jr. March event, gathering for Council Member Shang TOU from the City of Oakland, the City County Dinner, the Installation of Allen BROOKS as the NAACP President, meeting with Restore Merced, meeting with the former Mayor of Fresno, and meeting with Senator FEINSTEIN. He also spoke on the State of the City event.

**L. ADJOURNMENT**

**Clerk's Note:** The Regular Meeting adjourned at 7:14 PM.

**A motion was made by Mayor Murphy, seconded by Council Member Blake, to adjourn the Regular Meeting in honor of Bryce Bogs. The motion carried by the following vote:**

**Aye:** 7 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 0

**Absent:** 0



**ADMINISTRATIVE REPORT**

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**Agenda Item I.6.**

Meeting Date: 3/4/2019

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*Report Prepared by: Deneen Proctor, Director of Support Services*

**SUBJECT:** Approval of First Amendment to the Agreement for Labor Relations Consulting to Approve an Additional \$60,000 for Labor Contract Negotiations and Employee Related Legal Services with Law Firm of Liebert Cassidy Whitmore, for the Not to Exceed Amount of \$160,000

**REPORT IN BRIEF**

Consider approving first amendment to the Liebert Cassidy Whitmore Agreement for the not to exceed amount of \$160,000.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving the first amendment to an agreement for professional services with Liebert Cassidy Whitmore for continuing labor relations consulting, labor contract negotiations, and employee related matters in an amount not to exceed \$160,000; and,
- B. Authorizing the Finance Officer to make any necessary budget adjustments; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

**ALTERNATIVES**

- 1. Approve as recommended by staff; or
- 2. Approve, subject to modification as conditioned by City Council; or
- 3. Refer to staff for reconsideration or specific items; or
- 4. Deny

**AUTHORITY**

Charter of the City of Merced, Section 200 et. Seq.  
Merced Municipal code Section 3.04.

**CITY COUNCIL PRIORITIES**

As provided for in the 2018-2019 adopted budget.

**DISCUSSION**

The City has five bargaining units and four unrepresented groups. The City had initially allocated \$100,000 for the purpose of labor relations consulting, labor contract negotiations, and employee

related matters. The amount of the bills from Liebert Cassidy Whitmore is set to exceed the original amount budgeted due to unexpected lawsuits from two of the bargaining units. The City is requesting an additional amount to cover the costs incurred due to the pending litigation.

### **IMPACT ON CITY RESOURCES**

Funding is available within the Personnel Department's Fiscal Year 2018-19 approved budget.

### **ATTACHMENTS**

1. First Amendment to LCW Agreement

**AMENDMENT NO. 1 TO  
AGREEMENT FOR SPECIAL SERVICES  
BETWEEN THE CITY OF MERCED  
AND LIEBERT CASSIDY WHITMORE**

**THIS AMENDMENT** is executed by and between Liebert Cassidy Whitmore (Attorney) and the City of Merced (City), and will amend the prior agreement between the parties entitled Agreement For Special Services which was effective on July 01, 2018.

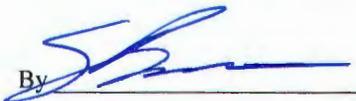
**WHEREAS**, the parties desire to amend their agreement to allow or provide for the continued consulting, representational and legal services pertaining to employment relations matters, including representation in negotiations and in administrative and court proceedings, as requested by City or otherwise required by law;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. This amendment shall be effective as of October 1, 2018.
2. **Compensation:** The first paragraph of Section 3. Fees, Costs, Expenses, shall be amended in its entirety as follows:  
  
City agrees to pay Attorney the sums billed monthly for time spent by Attorney in providing the services, including reasonable travel time, not to exceed \$160,000.00, unless mutually agreed upon by the parties.
3. That in all other respects the prior agreement of the parties shall remain in full force and effect except as amended herein.

LIEBERT CASSIDY WHITMORE,  
A Professional Corporation

CITY OF MERCED,  
A Municipal Corporation

By 

By \_\_\_\_\_

Name: Shellie Bennett

Name: \_\_\_\_\_

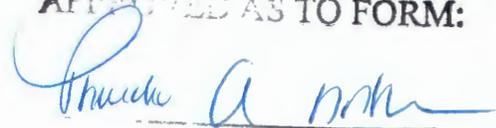
Title Managing Partner  
Fresno + Sacramento

Title \_\_\_\_\_

Date 2-21-19

Date \_\_\_\_\_

**APPROVED AS TO FORM:**





**ADMINISTRATIVE REPORT**

**Agenda Item I.7.**

Meeting Date: 3/4/2019

*Report Prepared by: Frank Quintero, Director of Economic Development*

**SUBJECT:** Approval of Purchase and Sale Agreement Between the City of Merced (Seller) and Valley Children’s Healthcare (Buyer) for the 4.54 Acre Parcel Located at 301 W. Yosemite Ave., Merced, CA in the Amount of \$2,100,000

**REPORT IN BRIEF**

Considers approving a Purchase and Sales Agreement for the sale of a City owned 4.54 acre parcel located at 301 W. Yosemite Avenue to Valley Children’s Healthcare for the development of a pediatric primary and specialty care medical office building. The Agreement contains escrow instructions for the sale of the property.

**RECOMMENDATION**

**City Council - Adopt a Motion:**

- A. Approving the purchase and sale agreement between the City of Merced and Valley Children’s Healthcare for 301 W. Yosemite Avenue (Assessor’s Parcel Number 231-040-021); and,
- B. Authorizing the City Manager or the Assistant City Manager to execute all the necessary documents; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

**ALTERNATIVES**

- 1. Approve as recommended by staff; or
- 2. Approve, subject to conditions as specified by the City Council; or
- 3. Deny the request; or,
- 4. Refer back to staff for reconsideration of specific items as requested by the Council; or
- 5. Defer action until a specified date

**AUTHORITY**

Charter of the City of Merced, Section 200

**CITY COUNCIL PRIORITIES**

City of Merced Adopted Budget Fiscal Year 2018-2019, Section 10 - Public Safety, Police, Police Headquarters - “In accordance with Council Goals & Priorities concerning Future Planning, the

Merced Police Department will continue to work closely with City staff to compose an accurate needs assessment and ideas for possible funding options for the construction of a new Police Headquarters.”

**DISCUSSION**

Valley Children’s Healthcare is in agreement with the terms contained in the Purchase Sale Agreement for the transaction of a 4.54-acre parcel located at 301 E. Yosemite Avenue (ATTACHMENTS 1 & 2). Council selected Valley Children’s Healthcare as the successful bidder for the subject site at the City Council meeting of October 15, 2018. The subject site is the former location for the future Police Department Headquarters. The site was originally purchased from the Estate of Spaulding Wathen for \$1,090,135.00 on March 1, 2010. Valley Children’s Healthcare bid to purchase the subject site for \$2,100,000.00.

Project Description

To expand services in Merced, Valley Children’s Healthcare proposes to develop a pediatric primary and specialty care medical office building on the Former Police Headquarters Site. Valley Children’s pediatricians and pediatric specialists would be the occupants of the medical office building. The first phase of the building may consist of 15,000 to 20,000 square feet. They anticipate that demand for pediatric services in Merced could grow to require a 40,000-square-foot medical office at full build-out.

Valley Children’s Hospital anticipates that at full-buildout, the value of the project will range from \$20 to \$30 million generating 50 to 60 full-time equivalent employees. Salary and benefits are expected to be from \$4 million to \$5 million at full-buildout.

Anticipated services to be provided at the Merced Specialty Care Center include:

Endocrinology	Gastrointestinal (GI)
Neurology	Cardiology & Cardiac Testing
Pulmonology	Urology
Orthopedics	Imaging Services
Maternal Fetal Medicine	Other services as warranted

Valley Children’s Healthcare intends to construct a medical office building which may be licensed as a Hospital-based licensed clinic. The facility will be an outpatient building providing primary and specialty care to children, and will not be a licensed hospital or offering emergency services.

Each year, more than 14,000 children from Merced County are cared for by Valley Children’s Healthcare. Since 1989, Valley Children’s Healthcare has operated an outpatient specialty care center on Olivewood Drive at Meadows Avenue in Merced. The new facility means more children get care closer to home.

Over the past three years, Valley Children's has envisioned and executed three similar projects around the Valley. In July 2018, VCH opened an 18,716-square-foot medical office building in Clovis. On October 1, 2018, VCH opened a new 51,517-square-foot medical office building in Bakersfield. A 40,243-square-foot medical office building in Modesto is slated to open in February 2019. The Merced medical office building will be similar in design concept to the Clovis location (ATTACHMENT 3.)

### Proposed Terms

Key proposed sales terms include the following:

Purchase Price: \$2.1 Million (sharing closing costs)

Land Size: 4.54-acres

Terms: Cash, no financing

Deposit: \$25,000.00

Escrow: Opens after Agreement is approved and fully executed

Due Diligence: 180 days from escrow opening

Development  
Pre-Application: Submit prior to end of due diligence period

Site Plan Review  
Application: 90 days from Development Pre-Application review

Escrow Closes: 30 days from Site Plan Application Hearing

Broker  
Commission: 3% of Purchase Price

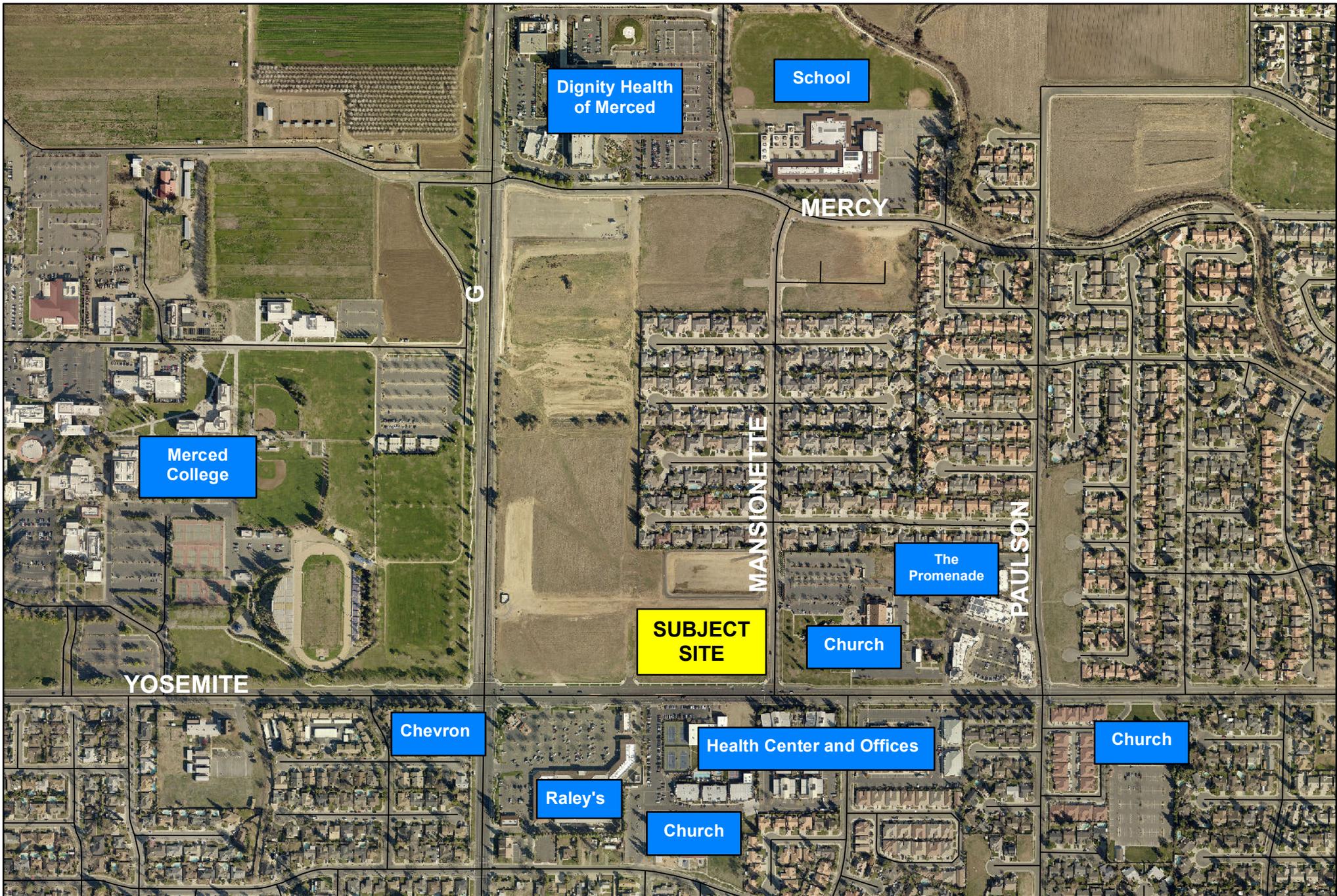
Buy Back Clause: Not constructed, City re-purchases minus Broker Commission

### **IMPACT ON CITY RESOURCES**

Closing costs and broker's commission will be paid from the land sale proceeds. The remaining proceeds will be used to fund Police Department Headquarters project 116040.

### **ATTACHMENTS**

1. Location Map
2. Proposed Purchase and Sale Agreement
3. VCH - Clovis Facility



**ATTACHMENT 1**  
**Former Police HQ Site**  
**Location Map**



*Inventing California's Future*

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and between the City of Merced, a California Charter Municipal Corporation (“Seller”) and Valley Children’s Healthcare, a California Non-Profit Public Benefit Corporation, whose address of record is 9300 Valley Children’s Place, Madera, California 93636 (“Buyer”).

WHEREAS, Seller owns the real property identified as 301 E. Yosemite Avenue, City of Merced, California (Assessor’s Parcel Number 231-040-021) and more fully described in Attachment “A” and shown on the map provided as Attachment “B,” which are incorporated herein by these references, (hereinafter the “Subject Property”); and,

WHEREAS, Buyer desires to purchase the Subject Property to construct a Valley Children’s Medical Group Medical Office (hereafter, the “Project”); and,

WHEREAS, City is willing to sell the Subject Property to the Buyer for construction of the Project.

WHEREAS, City declared Subject Property surplus on May 15, 2017, and the development and construction of the Project on the Subject Property will enhance the local economy and medical care in the City of Merced.

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Buyer and Seller do agree as follows:

**SECTION 1. PURCHASE & SALE.** Seller agrees to sell and Buyer agrees to purchase the Subject Property for the Project pursuant to the terms of this Agreement.

**SECTION 2. PURCHASE PRICE.** The purchase price for the Subject Property shall be Two Million One Hundred Thousand Dollars (\$2,100,000.00) for

approximately 4.54± acres (the "Purchase Price"). Buyer is acquiring the Subject Property in "as-is" condition.

a. Deposit by Buyer: Within five (5) days from the opening of escrow, Buyer shall place a deposit of Twenty-Five Thousand Dollars (\$25,000) into escrow (the "Initial Deposit").

b. Deposit of Additional Funds By Close of Escrow: At or before the close of escrow, Buyer shall deposit the sum of Two Million Seventy-Five Thousand Dollars (\$2,075,000) into escrow to be allocated against the Purchase Price at the close of escrow.

c. Independent Consideration. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, One Hundred and No/100 Dollars (\$100.00) of the Initial Deposit shall serve as independent consideration for Seller's performance under this Agreement ("Independent Consideration"). The Independent Consideration is independent of any other consideration provided hereunder, shall be fully earned by Seller and released to Seller by escrow agent upon the Effective Date hereof, and is not refundable under any circumstances.

SECTION 3. ESCROW. Escrow shall open on the Property within ten (10) days of the full execution of this Agreement at a title company selected by Seller, and shall close no later than thirty (30) days after the Site Plan and Interface Review Approval subject to the terms and conditions of this Agreement. Closing costs, including escrow costs, title insurance and transfer tax, shall be evenly split between Buyer and Seller.

a. Escrow shall be opened with Chicago Title, 7330 North Palm Avenue, Suite 101, Fresno, California 93711, (Barbie Clothier/Sue Ford), following the full execution of this Agreement.

b. Fourteen (14) days after the closing date, Buyer shall receive a recorded copy of the grant deed conveying fee simple title of the Property to Buyer. Seller may present the grant deed prior to the closing date.

c. All closing, escrow, recording and title insurance costs shall be shared as is customary in Merced County. Real estate taxes, if applicable, will be pro-rated at close of escrow.

d. At all times after permitted exceptions have been determined, title company must be ready, willing, and able to issue, upon payment of title company's regularly scheduled premium, a California Land Title Association (CLTA) owner's policy of title insurance showing title to the Subject Property vested in Buyer subject only to the permitted exceptions ("Title Policy") in the face amount of the Purchase Price, with such endorsements as Buyer may require ("Endorsements"), subject only to the lien of real property taxes for the current fiscal year not yet due or payable, and the standard preprinted exceptions and stipulations of the Title Policy. Buyer may, at its option, require that the Title Policy be a 2006 ALTA extended coverage policy instead of a CLTA standard coverage policy and/or request title insurance endorsements as long as the title company is committed to issue such ALTA extended coverage and/or such endorsements within thirty (30) days of the Close of Escrow. Buyer shall pay the additional cost therefor including the cost of any ALTA survey required by title company.

SECTION 4. CONDITIONS. Close of escrow and Buyer's and Seller's obligations shall be subject to the satisfaction of the following conditions:

a. Within ten (10) days of escrow opening, Seller shall deliver to Buyer a current title report, with copies of all underlying documents referenced or described therein. Buyer shall have thirty (30) days from receipt of said document to review and approve or disapprove same at Buyer's sole and absolute discretion.

b. Within ten (10) days of escrow opening, Seller shall provide Buyer with any and all documents in Seller's possession regarding the Subject Property. Buyer shall have thirty (30) days from receipt of such documents to review and satisfy itself with regards to the Subject Property.

c. Buyer shall have one hundred eighty (180) days from opening of escrow to conduct any and all due diligence including physical, economic and environmental evaluations that may include, but are not limited to, physical inspections, soil and ground water tests, other engineering feasibility studies, review of any and all governmental regulations and on- and off-site improvement obligations to Buyer's satisfaction.

d. Buyer to investigate the location and capacity of all utilities available to the Property to their satisfaction.

e. Buyer shall have one hundred eighty (180) days from opening of escrow to investigate and satisfy itself with regards to toxic or hazardous

contamination on the subject property during the due diligence period as specified in item 4b above.

f. Buyer shall be granted right of entry upon Property for the purposes of conducting soil tests and any other engineering studies Buyer deems necessary.

g. Buyer and Seller shall agree on the location and scope of any easements or restrictions on the Subject Property by the end of the one hundred eighty (180) day period following the opening of escrow.

In the event any of the foregoing conditions are not satisfied or waived by Buyer prior to the prescribed time frame herein, then all rights, obligations, and liabilities of Seller and Buyer shall terminate, and any deposited funds and any interest earned shall be returned to Buyer.

SECTION 5. RIGHT TO REPURCHASE. In the event Buyer does not develop and construct the Project as agreed upon in the specific time frame identified in Section 10, or otherwise agreed to by the parties, the Seller may repurchase the Subject Property at the sales price set forth in Section 2, minus the cost of the broker's commission with Buyer assuming all other of its out-of-pocket development costs.

SECTION 6. APPROVAL OF TITLE REPORT. Within ten (10) days of escrow opening, Seller shall provide a preliminary title report to Buyer. Buyer shall have thirty (30) days thereafter in which to approve the preliminary title report. If Buyer does not approve one or more of the exceptions of the preliminary title report and Seller refuses to remove said exception(s), then either Buyer or Seller shall have the right to terminate escrow and this Agreement.

SECTION 7. ASSIGNMENT. Neither this Agreement nor any part thereof shall be assignable; provided that, Buyer may assign this Agreement and the right to take title to the Subject Property to Valley Children's Medical Group, a California nonprofit public benefit corporation ("Medical Group"), a wholly-owned subsidiary of Buyer.

SECTION 8. SUBJECT TO OTHER OBLIGATIONS. This Agreement is conditioned upon Buyer's compliance with the requirements of the Merced Site Plan Approval Committee and/or the Merced Planning Commission. At the close of this transaction, Buyer will be issued a Grant Deed containing

restrictions and easements, including the Seller's right to repurchase the Subject Property pursuant to Section 5 and 10 of this Agreement.

SECTION 9. ZONING AND PERMITTED USES. The Subject Property is currently zoned Planned Development (P-D). The proposed Project (as described in Attachment "C" attached) is a permitted use within the Neighborhood Commercial (C-N) land use district of the City of Merced.

a. Prior to the expiration of the contingency period, Buyer will submit a Preliminary Development Application to the City for a Site Plan Review and Interface Review. Within ninety (90) days of the Preliminary Development Application review by the Development Review Committee, Buyer shall make full application for Site Plan Review and Interface Review. The full application shall be subject to consideration by the Merced Planning Commission. Buyer's deposit will be non-refundable except if they are denied their Site Plan Review and Interface Review. If the application is denied, all deposits will be returned to Buyer and neither Buyer nor Seller shall have any obligations to the other.

SECTION 10. COMMENCEMENT OF CONSTRUCTION, SCHEDULE, AND SELLER'S RIGHT TO REPURCHASE SUBJECT PROPERTY. Buyer agrees to obtain all necessary building permits and commence construction of the Project as described in Attachment "C" within twelve (12) months of the close of escrow and to thereafter diligently pursue construction to completion. It is hereby agreed that failure of Buyer to commence construction of the Project within said twelve (12) month period shall give Seller the right and option to repurchase the Subject Property. For purposes of this Agreement, the term "commence construction" shall mean that the notice to proceed has been issued for construction to the design builder for the Project. The purchase price for Seller's repurchase of the Subject Property shall be the repurchase price set forth in Section 5, without interest, appreciation, or reimbursement for any improvements, costs, expenses, or City, County, or other taxes or assessments levied or assessed against the Subject Property. Prior to completion of the main building structure(s) required for the Project, on the Subject Property, Buyer agrees not to transfer title to the Subject Property to another person or entity without Seller's prior written consent, which may be withheld at Seller's sole and complete discretion; provided that, Seller hereby consents to Buyer's transfer of title or assignment of the Agreement and the right to title by Buyer to Medical Group prior to closing.

SECTION 11. NOTICE. All notices required or available to be sent pursuant to this Agreement shall be delivered by either first-class certified mail, return receipt requested, and properly addressed with correct postage fully paid thereon or by personal delivery to the individuals designated above at the address designated below. All mailed notices shall be deemed delivered within three (3) business days of deposit in the U.S. Mail and personal delivery shall be deemed delivered upon actual delivery thereof at the addresses set forth below:

SELLER: Office of the Economic Development  
City of Merced  
678 West 18th Street  
Merced, California 95340

With a copy to: City Attorney  
City of Merced  
678 West 18th Street  
Merced, California 95340

BUYER: Valley Children's Healthcare  
Attn: Todd A. Santrupak,  
President and Chief Executive Officer  
9300 Valley Children's Place  
Madera, California 93636

With a copy to: Valley Children's Healthcare  
Attn: William E. Chaltraw,  
Jr., Senior Vice-President  
and Chief Legal Officer  
9300 Valley Children's Place  
Madera, California 93636

SECTION 12. INTERPRETATION. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the Sections and Subsections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 13. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 14. RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Seller and Buyer or their agents, employees or contractors. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

SECTION 15. NO THIRD PARTY BENEFICIARIES. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the Agreement or of any duty, covenant, obligation, or undertaking established herein.

SECTION 16. ENTIRE AGREEMENT. This Agreement is a fully integrated agreement that contains the complete, final, entire, and exclusive expression of the agreement and understanding of the parties hereto. This Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Agreement.

SECTION 17. AMENDMENTS IN WRITING. This Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the parties hereto and approved and adopted as required by law. Any attempted amendment not in compliance with the provisions of this Section shall be null and void.

SECTION 18. WAIVER. Any waiver by either party of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the

other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligation under this Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.

SECTION 19. COUNTERPARTS. This Agreement may be executed in counterparts and when each party has signed and delivered at least one such counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to the Seller and Buyer. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

SECTION 20. AUTHORITY TO EXECUTE. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their governmental or business entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

SECTION 21. REAL ESTATE COMMISSION. Buyer has retained the services of Ted Waldron of Fortune Associates Commercial Real Estate Services in its proposed acquisition of the Subject Property from Seller. Seller shall be responsible to pay a real estate commission of three percent (3%) of the Purchase Price to Fortune Associates upon close of escrow of the Subject Property. .

SECTION 22. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

SECTION 23. USE OF LOCAL CONTRACTORS FOR CONSTRUCTION AND LOCAL RESIDENTS AS EMPLOYEES. Buyer agrees to use its best efforts to use local contractors for the construction of Project/improvements on the Subject Property. In addition, Buyer agrees to use its best efforts to hire local residents for the jobs that will be created once the Project is completed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

SELLER:  
CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Frederic A. [Signature] 2-12-19  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Office

BUYER:  
VALLEY CHILDREN'S  
HEALTHCARE,  
a California Non-Profit Benefit  
Corporation

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

TELEPHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

TELEPHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 9300 Valley Children's  
Place  
Madera, CA 93636

Attachment A  
Legal Description of Subject Property

## EXHIBIT A

A parcel of land situated in the South West Quarter (SW 1/4) of Section 8, Township 7 South Range 14 East, M .D.B. & M, City of Merced, County of Merced, State of California, said parcel of land being a portion of Remainder D, as Remainder D is delineated on that certain map entitled, "FINAL MAP OF MANSIONETTE ESTATES UNIT 2", recorded in Volume 55, of Official Plats, at Pages 12-14, Merced County Records, said parcel of land also being portion of that certain real property described in Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015020, Merced County Records, said parcel of land being more particularly described as follows:

**COMMENCING** at the northwest corner of said Remainder D, thence  $S00^{\circ}42'36''W$ , for 283.54 feet along the west line of said Remainder D to **TRUE POINT OF BEGINNING**; thence  $N89^{\circ}56'09''E$ , for 612.97 feet parallel with the north line of said Remainder D to the east line of said Remainder D; thence  $S00^{\circ}42'17''W$ , for 352.11 feet along the said east line of Remainder D; thence along a curve concave to the northwest through a central angle of  $89^{\circ}13'31''$ , having a radius of 15.00 feet, and whose long chord bears  $S45^{\circ}19'03''W$ , for 21.07 feet to the south line of said Remainder D; thence  $S89^{\circ}55'48''W$ , for 583.00 feet along said south line of Remainder D; thence  $N44^{\circ}40'48''W$ , for 21.36 feet along the southwest line of said Remainder D; thence  $N00^{\circ}42'36''E$  for 351.77 feet along the west line of Remainder D to the **TRUE POINT OF BEGINNING**.

**SUBJECT TO** the Road Dedication Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015019, Merced County Records.

**ALSO SUBJECT TO** the Road Dedication Grant Deed to the City of Merced, recorded on December 22, 2011 as Document Number 2011-046171, Merced County Records.

The above-described parcel of land is delineated on Exhibit B, attached hereto, and made a part thereof.

The above-described parcel of land contains 224,747 Sq. Ft., more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



Attachment B  
Site Map

SANDPIPER AVENUE



SCALE: 1"=80'

N44°40'48"W  
21.36'

N00°42'36"E 351.77'  
334.91'

P.O.B.

297.99'

N44°40'48"W  
28.18'

N45°19'22"E  
6.99'

PORTION OF  
GRANT DEED 2010-015020, M.C.R.

Road Dedication to City of Merced  
Deed 2010-015019, M.C.R.

YOSEMITE AVENUE

Road Dedication to City of Merced  
Deed 2011-046171, M.C.R.

4.54 ACRES  
197,540 Sq. Ft.  
(Net)

5.16 ACRES  
224,747+ Sq. Ft.  
(Gross)

PORTION OF  
REMAINDER D  
55 O.P. 12

S89°55'48"W 583.00'

S89°55'48"W 573.70'

N89°56'09"E 606.93'

N89°56'09"E 612.97'

Road Dedication to City of Merced  
Deed 2010-015018, M.C.R.



*Joe M. Cardoso*  
1/22/2019

S45°18'55"W  
27.40'

S44°40'47"E  
1.60'

Δ=89°13'31"  
R=15.00'  
L=23.36'  
T=14.80'

302.52'  
S00°42'17"W 352.11'

MANSIONETTE DRIVE



**City of Merced**  
"Gateway to Yosemite"  
DEVELOPMENT SERVICES  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-8846

EXHIBIT B

DR. BY: CARDOSO
DATE: 1/18/19
CH. BY:
DATE:
File No.
SCALE: 1"=80'

Attachment C  
Project Description

## EXHIBIT C

### PROJECT DESCRIPTION

To expand services in Merced, Valley Children's Healthcare proposes to develop a pediatric primary and specialty care medical office building on the Former Police Headquarters Site. Valley Children's Medical Group's pediatricians and pediatric specialists would be the occupants of the medical office building. The first phase of the building may consist of 15,000 to 20,000 square feet. They anticipate that demand for pediatric services in Merced could grow to require a 40,000-square-foot medical office at full build-out.

Project Value: \$20 to \$30 million at full build-out.

Job Creation: 50 to 60 full-time equivalent employees at full build-out.

Construction Time: 15 to 18 months from commencement of construction.

Conceptual Site Plan: To be reviewed by City staff as part of the Site Plan Review Application.

Salary and Benefits: \$4 million to \$5 million at full-build out.

Property VCH is a tax-exempt organization.

Taxes : Sales Medical services provided by Valley Children's Medical Group are not subject to sales taxes.

Taxes:

Valley Children's Healthcare anticipates that the City of Merced will receive financial benefit from the families who visit the medical offices. At full build-out, Valley Children's Healthcare estimates serving 12,000 patients from outside Merced.



VALLEY CHILDREN'S HEALTHCARE  
SAMPLE ELEVATION  
CLOVIS, CA





**ADMINISTRATIVE REPORT**

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**Agenda Item I.8.**

Meeting Date: 3/4/2019

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*Report Prepared by: Janet German, Secretary III, Fire Dept.*

**SUBJECT: Approval of Revenue Increase in the Amount of \$9,450 to Other Revenue/Unclassified and Authorization to Appropriate in the Same Amount to the Training Expense Accounts Associated with the Fire Department External Training Program**

**REPORT IN BRIEF**

Consider approving a revenue increase to the Other Revenue/Unclassified account and appropriation of the same amount to the Training Expense account.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving an increase to revenue account 001-0901-360.01-01 (Other/Unclassified) of \$9,450; and,
- B. Approving an appropriation of the same amount to 001-0901-522.20-00 (Training Expense); and,
- C. Authorizing the Finance Officer to make budget adjustments as recommended by staff.

**ALTERNATIVES**

- 1. Approve as recommended by staff; or,
- 2. Deny; or,
- 3. Refer back to staff; or,
- 4. Continue to a future meeting.

**AUTHORITY**

Charter of the City of Merced, Article XI, Fiscal Administration, Section 1105 Budget - Appropriations, at any meeting after the adoption of the budget, the City Council may amend or supplement the budget by the affirmative votes of at least five members.

**CITY COUNCIL PRIORITIES**

This action is consistent with the city's operating principal to promote Public Safety, as provided for in the 2018-19 Adopted Budget.

**DISCUSSION**

One of the department's goals is to train its personnel to effectively manage and support major

incidents/disasters. In an endeavor to provide its membership and the public with the highest level of training available to increase everyone’s safety, the department has significantly increased the number of California State Fire Marshal certified classes and other training classes offered to its members and other fire agencies.

In this fiscal year, the department has hosted and received the following revenues:

<u>Class Name</u>	<u>Revenue</u>
• Rope Rescue Technician	\$2,100
• Rescue Systems I	\$ 600
• Driver Operator 1A	\$2,750
• Driver Operator 1B	<u>\$4,500</u>
TOTAL	\$9,950

Due to high demand, the department will host the following courses prior to the fiscal year end:

<u>Class Name</u>	<u>Revenue</u>
• Rope Rescue Technician	Undetermined
• Rescue Systems I	Undetermined
• Fire Inspector 1 Series	Undetermined
• Fire Inspector 2 Series	Undetermined
• Command and Control	Undetermined
• Leadership and Team Building	Undetermined
• FireLine Emergency Medical Technician (EMT)	Undetermined

It is likely an additional supplemental appropriation will be requested for revenues derived from the above classes at a future Council Meeting.

During the annual budgeting process, training revenues were developed based upon revenues from prior fiscal years, accordingly \$500 was budgeted in the current fiscal year. Due to unanticipated high volume of training courses offered this fiscal year, revenue and expense appropriations are in need of adjustment.

Actual Revenue	\$9,950
Budget	<u>(\$ 500)</u>
	\$9,450

The increased revenue budget adjustment will sub-vent increased training expenditures through a recommended \$9,450 supplemental appropriation.

**IMPACT ON CITY RESOURCES**

The purpose of the recommended adjustments to the revenue and expenditure accounts is to accurately account for the increased revenue and to sub-vent the increased expenditures through a supplemental appropriation.



**ADMINISTRATIVE REPORT**

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**Agenda Item I.9.**

Meeting Date: 3/4/2019

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*Report Prepared by: Phaedra A. Norton, City Attorney*

**SUBJECT:** Approval of Retention of Atkinson Farasyn, LLP as Special Counsel to Assist with the Negotiation and Preparation of Development Agreements, Including Pre-Annexation Development Agreements, for the Not to Exceed Amount of the Cost of Services Related to a Developer's Specific Project; Authorization of a Budget Amendment for Fiscal Year 2018/2019 to Accept and Appropriate Developer Deposits to Pay for the Cost of the Negotiation and Legal Review of Development Agreements, Including Pre-Annexation Development Agreements

**REPORT IN BRIEF**

Considers retaining the law firm of Atkinson, Farasyn, LLP as Special Counsel for pre-annexation development agreements and appropriating developer deposits to pay for the cost associated with the negotiation and legal review of said agreements.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Amending the Fiscal Year 18/19 budget to receive the funds and increase cost recovery revenue for special counsel services and continually appropriate any funds received to pay for the costs related to the negotiation and legal review of development agreements; and,
- B. Authorizing the establishment of any additional accounts and/or revenue and expenditure lines within the City Attorney's budget as determined necessary and appropriate by the City's Finance Officer; and,
- C. Approving the Professional Services Agreement with Atkinson, Farasyn LLP to assist in the negotiation and legal review of Development Agreements, including Pre-Annexation Development Agreements, and authorize the City Manager or the Assistant City Manager to execute the same.

**ALTERNATIVES**

- 1. Approve as recommended;
- 2. Modify the recommendation and provide direction to staff for further action; and,
- 3. Deny the request.

**AUTHORITY**

Charter of the City of Merced Section 200 *et seq.*  
Government Code Section 65864.

City Resolution 2005-101

**DISCUSSION**

Background

In 2005, the City Council adopted Resolution 2005-101, which outlines procedures to consider new development agreements by the City. Government Code Section 65865(b) authorizes cities to enter into pre-annexation agreements with those having a legal or equitable interest in real property within the City's sphere of influence. The pre-annexation agreement, once adopted, cannot become operative until the annexation process is complete. The agreement must provide a time period during which the annexation is to be completed. If the annexation is not completed within the time specified in the agreement, or any extension thereto, the agreement becomes null and void and of no legal effect.

Resolution 2005-101 also provides that a developer desiring a development agreement must provide some public benefit to balance the City's commitment to retain current regulations. This is designed to ensure that the City receives a good deal in return for development commitments. The procedures require a developer who desires to have a development agreement to deposit funds with the City to pay for the costs associated with negotiation and legal review of the agreement.

When this process was implemented in 2005, the City retained a former City Attorney from the City of Sunnyvale to assist us with negotiation and preparation of the Pre-Annexation Development Agreements. Valerie Armento served as the City Attorney of Sunnyvale for 14 years and as the City Attorney for South San Francisco for 4 ½ years. She has practiced public law since 1979. In addition to a law degree, she has her master's degree in regional planning. Ms. Armento's expertise in this area and familiarity with the City's pre-annexation development agreement procedures will greatly expedite the process for developers. Ms. Armento is currently with the firm of Atkinson, Farasyn, LLP, and she is available to assist the City. Her hourly rate is \$265.00 per hour, which is very reasonable for the level of expertise and experience of Ms. Armento.

The City would pay Ms. Armento's bills from the developer's deposit and either reimburse the developer with any balance remaining in the deposit if the fees and costs are less than the amount on deposit or bill the developer for the costs and fees if they exceed the deposit. As such, the special counsel services provided should not have a financial impact on the City.

The City Attorney recommends that the City Council approve the Agreement with Ms. Armento and make her services available on the City's behalf.

**IMPACT ON CITY RESOURCES**

Fees associated with Developer's pre-annexation is paid with deposits from developers. No appropriation of City's funds needed.

**ATTACHMENTS**

1. Legal Services Agreement with Atkinson Farasyn, LLP

**ATKINSON • FARASYN, LLP**  
ATTORNEYS AT LAW

5050 EL CAMINO REAL, SUITE 205  
LOS ALTOS, CALIFORNIA 94022  
TELEPHONE (650) 967-6941  
FACSIMILE (650) 967-1395

J.M. ATKINSON (1892-1982)  
L.M. FARASYN (1915-1979)

REPLY TO:  
VALERIE J. ARMENTO

January 7, 2019

Phaedra Norton, City Attorney  
City of Merced  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

Re: Pre-Annexation Agreement for Rogina Project, 151 Acres

Dear Ms. Norton:

This proposal is in response to your request for assistance with the review of a pre-annexation agreement for the Rogina project, which encompasses 151 acres of undeveloped land within the sphere of influence of the City of Merced. You contacted me because I worked on pre-annexation agreements for the City of Merced in the 2005-2007 timeframe.

You provided me with a marked-up draft of the City's form pre-annexation agreement prepared by the Rogina project proponents. It is my understanding the City has not used or reviewed this form in approximately a decade. I understand time is of the essence and would anticipate completing my review by January 19, 2019.

I am willing to provide services at an hourly rate consistent with the prevailing attorney hourly rate in the Merced area, \$265 per hour, and an overall not-to-exceed amount of \$6,000. Time will be recorded in one-tenth of an hour (0.1). Atkinson•Farasyn does not have any associates, so all work will be done by me. The firm carries all typically required insurances. Bills will be submitted shortly after the end of the month.

Please let me know if any additional information is desired. I look forward to assisting the City of Merced.

Yours truly,

Valerie J. Armento

The above proposal is agreed to:

Steve Carrigan, City Manager

**APPROVED AS TO FORM:**

Atkinson•Farasyn, LLP  
Taxpayer ID # 94-1091347



**ADMINISTRATIVE REPORT**

**Agenda Item I.10.**

Meeting Date: 3/4/2019

*Report Prepared by: Stephani Davis, Development Services Tech II, Planning Division*

**SUBJECT: Approval of Street Closure Request #19-02 (Lao Association, with Merced Main Street Association) for Use of West Main Street between K and M Streets for the Lao New Year Celebration Event on April 13, 2019 from 8:00 AM to 6:00 PM**

**REPORT IN BRIEF**

The Lao Association, with co-sponsor Merced Main Street Association, is requesting the closure and use of West Main Street between K and M Streets for a celebration of the Lao culture, to include a procession, on Saturday, April 13, 2019, from 8:00 a.m. to 6:00 p.m.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the street closures of W. Main Street, between K and M Streets (including Canal Street between W. Main and Arbor Lane), from 8 a.m. to 6 p.m. for the Vendor Fair event, and W. Main Street, between I and K Streets, from 8 a.m. to 1 p.m. for the float parking and set-up, on Saturday, April 13, 2019, subject to the details and conditions outlined in the administrative staff report.

**ALTERNATIVES**

1. Approve, as recommended by staff; or,
2. Approve, subject to modifications as conditioned by Council; or,
3. Deny the request completely; or,
4. Refer back to staff for reconsideration of specific items as requested by Council; or,
5. Continue item to a future Council meeting (date and time to be specified in City Council motion).

**AUTHORITY**

City of Merced Charter Section 200; California Vehicle Code (CVC) Section 21101(e), as follows:

“21101. Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters:

(e) Temporarily closing a portion of any street for celebrations, processions, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.”

**CITY COUNCIL PRIORITIES**

Not applicable.

## DISCUSSION

### Requested Streets

The specific streets and times of closure for this two-part event to be held on Saturday, April 13, 2019, are listed as follows:

#### *Street Closure with Vendor Fair:*

- Streets: W. Main Street, between M Street and K Street - including Canal Street, from W. Main Street to Arbor Lane (Attachment 2).
- Closure time requested: 8:00 a.m. to 6:00 p.m.
- Details provided below.

#### *Procession and Cultural Performances:*

- Streets: W. Main Street, between Martin Luther King Jr. Way and I Street (to be used for parking the floats prior to the procession); and W. Main Street from K Street and Martin Luther King Jr. Way (to be used to migrate the floats toward the main event area from the staging area) (Attachments 3 and 4).
- Closure time requested: 8:00 a.m. to 1:00 p.m.
- Details provided below.

### Background

Shortly after the Vietnam War, Laotian refugees began arriving in the United States. According to the U.S. Census estimates, by 1980, the Laotian population in the United States reached 47,683, a number which more than tripled by 1990, to 147,375. In the 1980's, more than 10,000 of those Laotian refugees settled in the farming communities of the Central Valley, enriching its already-diverse population, and Merced was no exception.

In 1987, the Lao Association of Merced, in an effort to both preserve and showcase the rich cultural heritage of Laos, held Merced's first Lao New Year celebration, and again the following year. However, in the 30 years since, while similar events have been held by other cultures, the Lao New Year event has not been held.

The applicant, Sue Emanivong/ Lao Association, along with the Merced Main Street Association, seek to bring the event back this year, and continue it in April of each year here forth.

### Event Description

The resurrected Lao New Year Celebration will contain two parts: a vendor fair, with food booths from different vendors, hosted by the Lao Association of Merced, and a procession, with cultural dance performances in front of Bob Hart Square at the Canal and W. Main Street intersection. Details of each of the two parts are explained separately below.

Specific features of the event as a whole are: "Giving Alms to Monks" (10:00 a.m.), procession with

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decorated floats (12:30 p.m.), cultural dance performances (approximately 2:00 p.m.), and a “Baci Blessing” (4:00 p.m.). The first and last events are traditional rituals observed by Buddhist and Lao communities; the former, traditionally performed by monks before the first meal of the day. The latter is a blessing ceremony performed to celebrate important events, such as the Lao New Year.

The applicant also requested the use of Bob Hart Square for one of their water blessing ceremony, through a separate submittal; because this event will not be serving alcohol, this request will be processed at staff level.

### Vendor Fair

As listed above, the requested streets for this part of the event is W. Main Street between M Street and K Street; and Canal Street between W. Main Street and Arbor Lane (the alley between W. Main Street and W. 18<sup>th</sup> Street) (Attachment 2). Streets will close at 8:00 a.m. on April 13, 2019, and fully reopen by 6:00 p.m. The event itself is scheduled from 10:00 a.m. to 5:00 p.m.

After the closure of the street, Vendors will begin setting up for the day on both sides of W. Main Street and Canal Streets (Attachment 2), leaving a 22-foot-wide clearance area for emergency services.

The vendor fair will be open during the procession and performance portion of the event and will end by approximately 5:00 p.m.

### Procession and Cultural Performances

As listed above, the requested streets for the procession portion of the event are: W. Main Street from M Street to I Street (Attachment 4). Streets will close at 8:00 a.m. on April 13, 2019, with the area between K and I Streets to be re-opened at 1 p.m., after the procession commences

The procession will begin at 12:30 p.m. Floats will proceed from Martin Luther King Jr. Way, along W. Main Street and stop at M Street. The floats will then park on W. Main Street and remain for the duration of the vendor fair, so event participants can take pictures in front of them. After the floats are parked, dancers that were riding on the floats will assemble and perform for spectators in the intersection of W. Main Street and Canal Street, in front of Bob Hart Square.

As stated above, at 1:00 p.m., following the procession, barricades on W. Main Street from Martin Luther King Jr. Way to I Street (including the intersection at K Street) will be removed, reopening those streets, and adjacent businesses, to through traffic. Barricades will remain on W. Main Street from M Street to K Street, and Canal Street from W. Main Street to Arbor Lane, for the Vendor Fair.

At least seventy-two hours (three days) prior to the street closures, the event organizers are required to notify nearby businesses and residences within one half-mile of the affected streets (Condition #8). To ensure this is done, event organizers are now required to provide staff with confirmation that this notification was given. To accomplish this, staff has prepared a standard form that the event sponsor shall complete, photocopy, and distribute to businesses and residences within the stated area (Attachment 5). A copy of this form shall also be signed and submitted to Planning Department staff,

affirming that the required businesses and residences were notified.

Conditions of Approval

The event and street closure will be subject to the following conditions, if approved:

1. By applying for the street closure request, the Permittee shall agree to indemnify, protect, defend (with counsel selected by the City), save, and hold City, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Event Sponsor or Event Sponsor's officers, employees, agents, volunteers, and participants during performance of the Event, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Event Sponsor or its officers, employees, agents, volunteers, or participants, or resulting from the negligence of the City, its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the City. Acceptance by City of insurance certificates and endorsements required for this Event does not relieve Event Sponsor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.
2. Prior to engaging in the event, Event Sponsor shall provide the City with a Certificate of Liability Insurance evidencing coverage in an amount of no less than \$500,000 for property damage and \$500,000 for personal injury or a minimum combined single limit coverage of \$500,000. Said policy shall stipulate that this insurance will operate as primary insurance and that no other insurance will be called on to cover a loss covered thereunder. Additional insured endorsements evidencing this coverage, naming the City of Merced, its Officers, Employees, and Agents as additional insureds, must be submitted to the City prior to the event. This certificate shall provide that thirty (30) days written notice of cancellation shall be given to the City. Certificates of Insurance shall also be provided for Automobile insurances of all automobiles used for the event. If the Event Sponsor has any employee(s), full workers' compensation insurance shall be provided with a limit of at least \$100,000 for any one person as required by law.
3. The applicant shall obtain, at its sole cost and expense, special events coverage insuring the City and its officer, employees, volunteers, and agents from any and all claims relating to the project. Special events coverage may be obtained through private insurance or is available through application with the City Clerk's office three weeks prior to the event.
4. Failure to comply with any law, rule, or regulation applicable to the use of said streets shall be grounds to revoke any such permit and, in such circumstances, the Chief of Police shall immediately revoke said permit. The Event Sponsor or permit holder, in such case, shall have the right to appeal said revocation to the City Council.
5. The applicant shall comply with all applicable statues, ordinances, rules, regulations, etc., including all requirements of the City of Merced Fire Department.
6. Event sponsor shall be responsible for placing and removing all traffic barricades and posting of

parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to towing of vehicle(s) per California Vehicle Code Section 22651(m). All barricades and signs shall be removed by the event sponsor immediately following end of the event.

7. Event sponsor shall be responsible for dismantling and removing all equipment, temporary structures, trash, and other debris within and around the closure area generated by the event prior to the expiration of the closure permit.

8. Event sponsor shall contact all businesses and residences affected by the street closure(s), advising them of the hours, conditions, and reason thereof within one half-mile of the encroachment area at least seventy-two (72) hours prior to the event. Event Sponsor shall provide the City confirmation that the proper notification was given (Attachment 5).

9. Adequate supervision and security throughout the event perimeter shall be provided by the event sponsor to ensure the safety of event participants and the public, as required by the Police Department.

10. Event sponsor shall provide and maintain a minimum 22-foot-wide emergency vehicle access path into and through the closure area at all times via movable barriers. Fire hydrant access shall not be blocked at any time whatsoever.

11. The Merced City Police Department or their designee has the authority to immediately cancel all activities requested with this street closure if there is a police or other emergency incident in the area. Application fees are non-refundable.

12. Event sponsor shall be responsible for removing all equipment, trash and debris, including removal of "no parking" signs, within and around the closure area that is generated from the event prior to the expiration of the closure permit.

13. Alcoholic beverages may not be served or sold at this event.

14. Noise from music or other activities shall be kept to reasonable levels so as not to disturb the nearby residential areas.

15. Event sponsor shall be responsible for ensuring that all independent vendors and services involved with the event obtain or already possess a current City of Merced business license.

16. Event sponsor and all food and drink vendors and caterers shall comply with all requirements of the Merced County Environmental Health Department with regards to the preparation and serving of food and drink.

17. The applicant/event sponsor shall arrange and pay for special event City Refuse service, or provide other suitable means for trash collection, as deemed appropriate by the City of Merced Public Works/Refuse Division.

18. All other provisions addressed in Ordinance #1941 Chapter 12.42 (Temporary Street Closures)

shall apply.

### **IMPACT ON CITY RESOURCES**

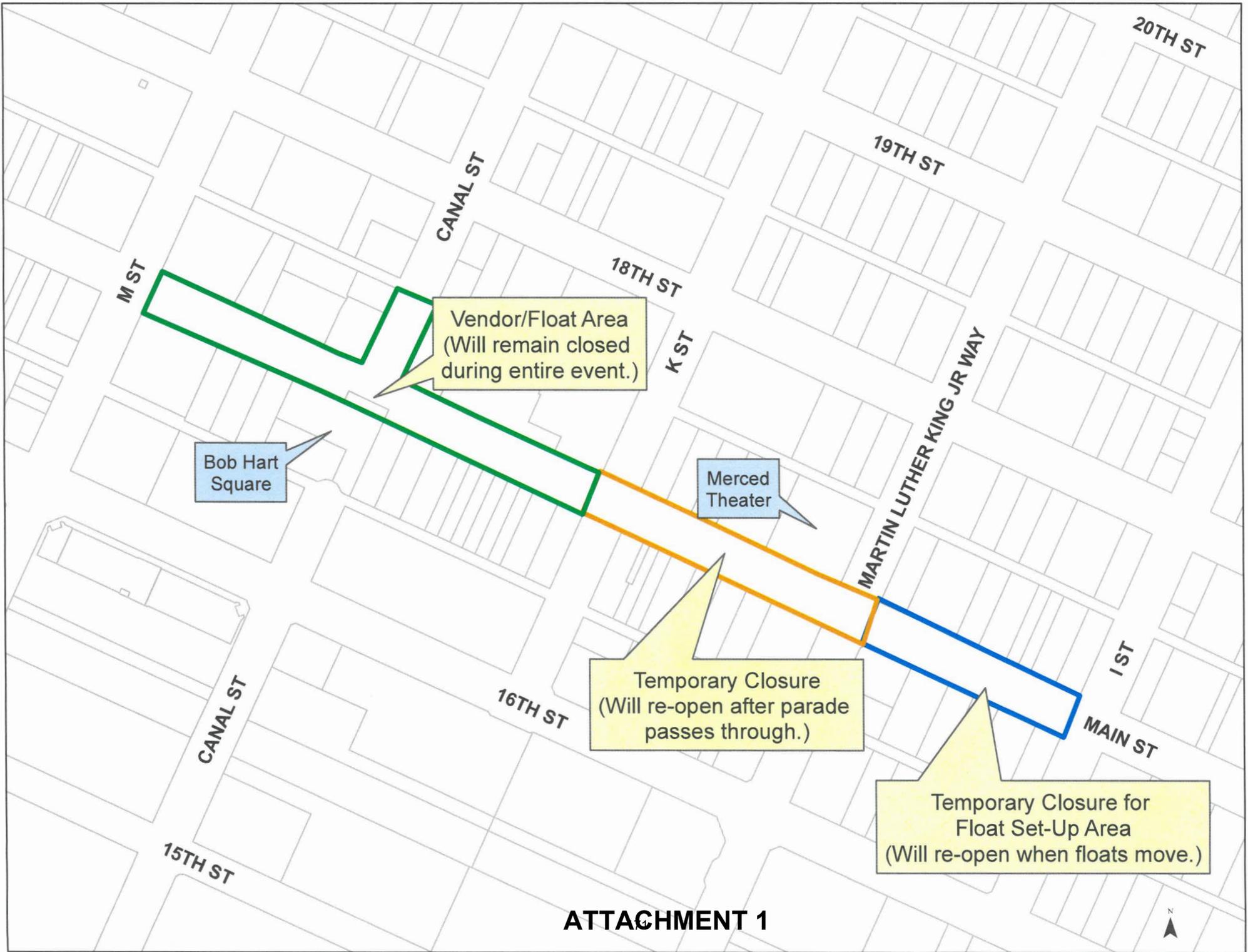
The street closure event will be run entirely by volunteers, with hired security by a local guard company.

With the extension of the street closure to include W. Main Street (from K Street to Martin Luther King Jr., Way), the applicant is not requesting assistance from the Police Department; they plan to use volunteers for traffic control.

There will be a small impact to the Public Works Department, as special event refuse service will be requested by the event sponsor. Vendors will have their own power sources if needed.

### **ATTACHMENTS**

1. Location Map
2. Vendor Fair Site Plan
3. Float Staging Area Site Plan
4. Procession Site Plan
5. Notice of Pending Street Closure form



Vendor/Float Area  
(Will remain closed during entire event.)

Bob Hart Square

Merced Theater

Temporary Closure  
(Will re-open after parade passes through.)

Temporary Closure for Float Set-Up Area  
(Will re-open when floats move.)

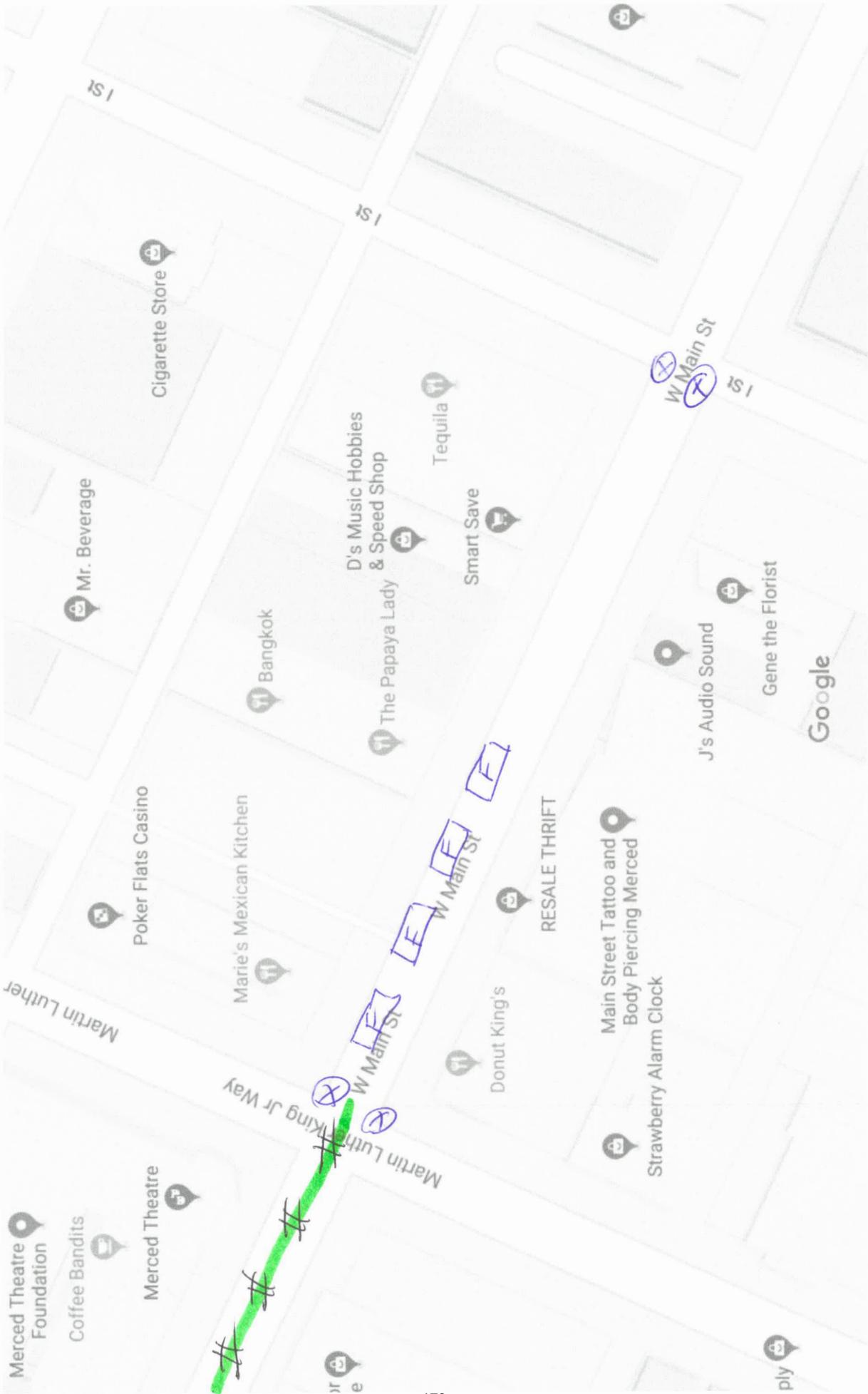
# ATTACHMENT 1





Set up of Flats 10am - 3pm

Google Maps



# = Barricades

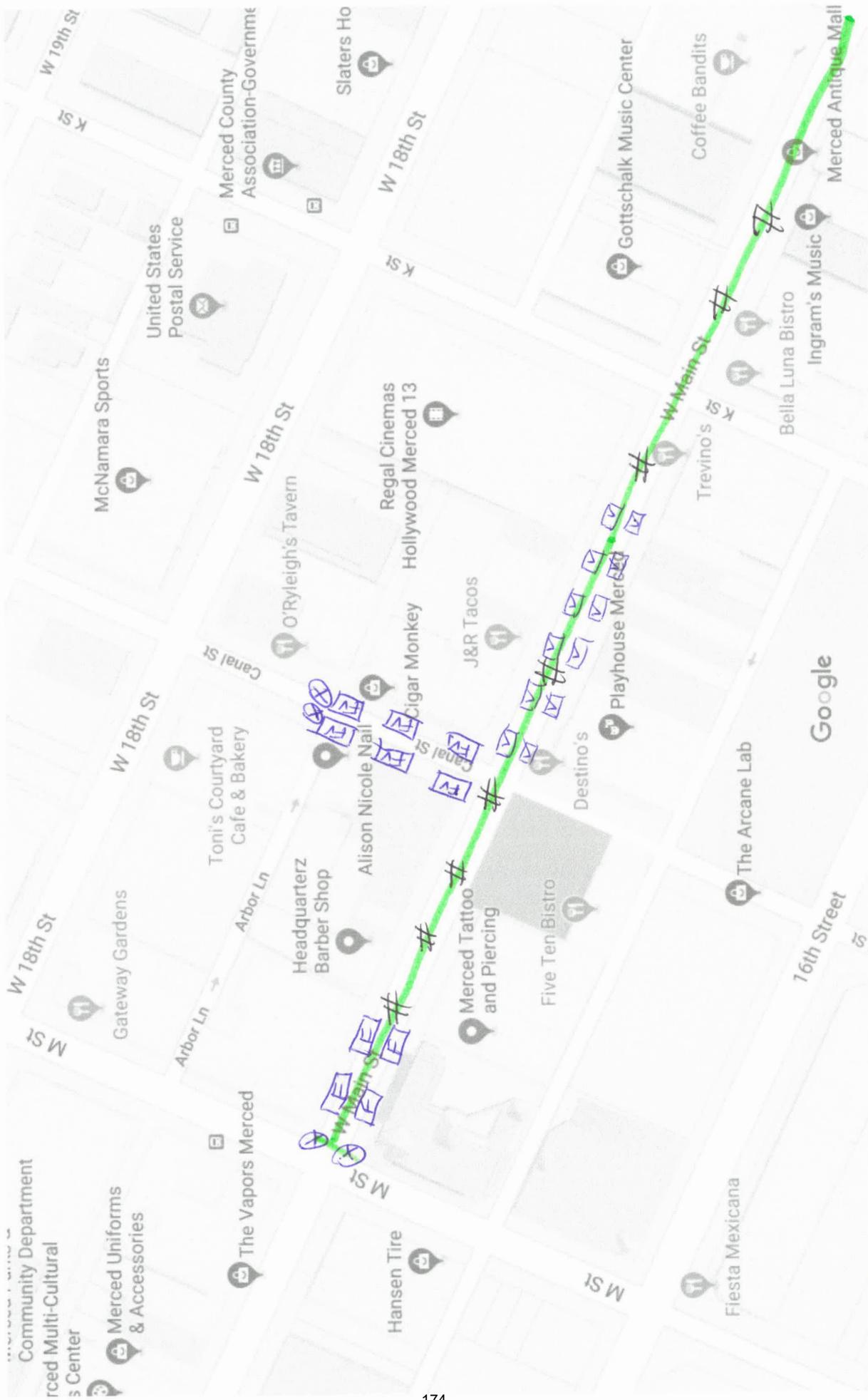
F = Flat

# = Parade Route

ATTACHMENT 3

Parade 12:30pm - 1:00pm

Google Maps



X = Barricades  
 V = Vendors  
 F = Food Vendors

# = Parade Route

## NOTIFICATION OF PENDING STREET CLOSURE

This is to notify you of an event that will require the closure of street(s) in your area. Please note the details below, including the date and time of the closure(s), and plan to park your vehicle(s) off the affected street(s) on the day of the event. Your cooperation is greatly appreciated. If you have any concerns, please notify the contact person listed.

Name of Event: \_\_\_\_\_ Type of event (parade, etc.): \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Date(s) of closure: \_\_\_\_\_ Time: between \_\_\_\_\_ am/pm and \_\_\_\_\_ am/pm

Streets to be closed: \_\_\_\_\_

Other streets with restricted access: \_\_\_\_\_

*Please Note:* Event Sponsor is responsible for posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to any necessary towing of vehicle(s), per California Vehicle Code Section 22651(m).

To avoid having your vehicle towed, please keep this notice as a reminder and comply with the posted parking restrictions. If you are a business with employees, please notify your employees as soon as possible and post this notice in a conspicuous location. Thank you.

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## NOTIFICATION OF PENDING STREET CLOSURE

This is to notify you of an event that will require the closure of street(s) in your area. Please note the details below, including the date and time of the closure(s), and plan to park your vehicle(s) off the affected street(s) on the day of the event. Your cooperation is greatly appreciated. If you have any concerns, please notify the contact person listed.

Name of Event: \_\_\_\_\_ Type of event (parade, etc.): \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Date(s) of closure: \_\_\_\_\_ Time: between \_\_\_\_\_ am/pm and \_\_\_\_\_ am/pm

Streets to be closed: \_\_\_\_\_

Other streets with restricted access: \_\_\_\_\_

*Please Note:* Event Sponsor is responsible for posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to any necessary towing of vehicle(s), per California Vehicle Code Section 22651(m).

To avoid having your vehicle towed, please keep this notice as a reminder and comply with the posted parking restrictions. If you are a business with employees, please notify your employees as soon as possible and post this notice in a conspicuous location. Thank you.

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To be signed by Event Sponsor Representative after completion of required 72-hour notification and submitted to the City of Merced Planning Dept, City Hall (2<sup>nd</sup> Floor), 678 W. 18<sup>th</sup> Street, Merced.

I have notified the required parties of the dates, times, and affected streets, as required.

Signed \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

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**ATTACHMENT 5**



ADMINISTRATIVE REPORT

Agenda Item I.11.

Meeting Date: 3/4/2019

*Report Prepared by: Stephani Davis, Development Services Tech II, Planning Division*

**SUBJECT:** Approval of Street Closure Request #19-03 by the Sacred Heart Catholic Church to Host the "Stations of the Cross" Reenactment and the Silent March for Good Friday on April 19, 2019, from 3:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 8:00 p.m. on Canal Street Between West 13<sup>th</sup> and West 11<sup>th</sup>, West 11<sup>th</sup> Street Between Canal and M Streets, West 12<sup>th</sup> Street Between M and Canal Streets and the Alleyway Behind Sacred Heart Catholic Church

**REPORT IN BRIEF**

Considers approving a request by the Sacred Heart Catholic Church for the closure and use of City streets on April 19, 2019, for the Stations of the Cross Reenactment. The request seeks approval to close Canal Street (between West 13<sup>th</sup> Street and West 11<sup>th</sup> Street), West 11<sup>th</sup> Street (between Canal Street and M Street), M Street (between West 11<sup>th</sup> Street and West 13<sup>th</sup> Street), West 12<sup>th</sup> Street (between M Street and Canal Street) and the alleyway behind the church located between W. 13<sup>th</sup> Street and 12<sup>th</sup> Street on Friday, April 19, 2019, from 3:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 8:00 p.m.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the closure of Canal Street (between West 13<sup>th</sup> Street and West 11<sup>th</sup> Street), West 11<sup>th</sup> Street (between Canal Street and M Street), M Street (between West 11<sup>th</sup> Street and West 13<sup>th</sup> Street), West 12<sup>th</sup> Street (between M Street and Canal Street) and the alleyway behind the church located between W. 13<sup>th</sup> Street and 12<sup>th</sup> Street, as requested by Sacred Heart Catholic Church, on Friday, April 19, 2019, from 3:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 8:00 p.m.; subject to the conditions outlined in the administrative staff report.

**ALTERNATIVES**

1. Approve, as recommended by staff; or,
2. Approve, subject to modifications as conditioned by Council; or,
3. Deny the request completely; or,
4. Refer back to staff for reconsideration of specific items as requested by Council; or,
5. Continue to a future Council meeting (date and time to be specified in the motion).

**AUTHORITY**

City of Merced Charter Section 200; California Vehicle Code (CVC) Sections 21100(a) and 21101(e), the latter as follows:

"21101. Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters:

"(e) Temporarily closing a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

## **CITY COUNCIL PRIORITIES**

Not applicable.

## **DISCUSSION**

### Event Description

Sacred Heart Catholic Church requests the street closures to host two religious activities associated with Good Friday on April 19, 2019. As with other Catholic churches honoring this day, these activities include a "Stations of the Cross" procession. The procession will stop and start intermittently in order to perform certain scenes in the Passion of the Christ. This procession will begin at 3:00 p.m. and will last approximately one hour. Additionally, the Silent March for Good Friday will be a slow walk through the closure area and will also last approximately one hour. This march will begin at 7:00 p.m.

The "Stations of the Cross" reenactment and the Silent March for Good Friday are two separate activities held in connection with Good Friday remembrances. The congregation expects an attendance of approximately 800 people for both events. Food or alcohol will not be served at this event.

### Street Closure Details

Requested street closure times are as follows:

- "Stations of the Cross": Friday, April 19, 2019; 3:00 p.m. to 4:00 p.m.
- Silent March for Good Friday: Friday, April 19, 2019; 7:00 p.m. to 8:00 p.m.

Requested street closure locations

- Canal Street, between West 13<sup>th</sup> Street and West 11<sup>th</sup> Street
- 11<sup>th</sup> Street, between Canal Street and M Street
- M Street, between West 11<sup>th</sup> Street and West 13<sup>th</sup> Street
- 12<sup>th</sup> Street, between M Street and Canal Street
- The alleyway behind the church, between 13<sup>th</sup> Street and 12<sup>th</sup> Street

Route (both events will use the same route):

The route will begin from the alley between W. 13th/W. 12th/M/Canal Streets (adjacent to the church), then proceed east to Canal Street, south to W. 11th Street, west to M Street, north to W. 12th Street, and end the procession by entering the church office's parking lot (519 W. 12th Street), and returning to the front of the church. All streets will be fully open during the hours of 4:00 p.m. and 7:00 p.m. between activities.

The affected streets will be closed as the processions move through the loop and then will be reopened when the streets are clear for traffic. Barricades will be used to block off all streets. Traffic control will be provided at the surrounding six intersections by church volunteers and the Merced Police Department to ensure the safety of participants.

At least seventy-two hours (three days) prior to the street closures, the event organizers are required to notify nearby businesses and residences within one-half mile of the affected streets (Condition #5). To ensure this is done, event organizers are required to provide staff with confirmation that this notification was given. To accomplish this, staff has prepared a standard form that the event sponsor shall complete, photocopy, and distribute to businesses and residences within the stated area (Attachment 2). A copy of this form shall also be signed and submitted to Planning Department staff, affirming that the required businesses and residences were notified.

### Conditions of Approval

The event and street closure will be subject to the following conditions, if approved:

1. By applying for the street closure request, the Permittee shall agree to indemnify, protect, defend (with counsel selected by the City), save, and hold City, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Event Sponsor or Event Sponsor's officers, employees, agents, volunteers, and participants during performance of the Event, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Event Sponsor or its officers, employees, agents, volunteers, or participants, or resulting from the negligence of the City, its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the City. Acceptance by City of insurance certificates and endorsements required for this Event does not relieve Event Sponsor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.
2. Prior to engaging in the event, Event Sponsor shall provide the City with a Certificate of Liability Insurance evidencing coverage in an amount of no less than \$500,000 for property damage and \$500,000 for personal injury or a minimum combined single limit coverage of \$500,000. Said policy shall stipulate that this insurance will operate as primary insurance and that no other insurance will be called on to cover a loss covered thereunder. Additional insured endorsements evidencing this coverage, naming the City of Merced, its Officers, Employees, and Agents as additional insureds, must be submitted to the City prior to the event. This certificate shall provide that thirty (30) days written notice of cancellation shall be given to the City. Certificates of Insurance shall also be provided for Automobile insurances of all automobiles used for the event. If the Event Sponsor has any employee(s), full workers' compensation insurance shall be provided with a limit of at least \$100,000 for any one person as required by law.
3. Failure to comply with any law, rule, or regulation applicable to the use of said streets shall be grounds to revoke any such permit and, in such circumstances, the Chief of Police shall immediately

revoke said permit. The Event Sponsor or permit holder, in such case, shall have the right to appeal said revocation to the City Council.

4. Event sponsor shall be responsible for placing and removing all traffic barricades and posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to towing of vehicle(s) per California Vehicle Code Section 22651(m).

5. Event sponsor shall contact all businesses and residences affected by the street closures, advising them of the hours, conditions, and reason thereof within one-half mile of the closure area at least seventy-two (72) hours prior to the event. Event Sponsor shall provide the City with confirmation that the proper notification was given (Attachment 2).

6. Event sponsor shall provide emergency vehicles access to and through the interior of the closure area at all times. Fire hydrant access shall not be blocked at any time whatsoever.

7. In addition to the traffic control provided by the Merced Police Department, the Event Sponsor shall provide traffic monitors at the frequency of 3-4 volunteers each City block throughout the closure area in order to safely and efficiently move the activities through the closure areas. Each traffic monitor shall wear a safety vest for visibility and, at night, shall carry a flashlight.

8. Prior to and for the duration of each activity, safety monitors shall be stationed at the east and west ends of each affected alley to ensure vehicles cannot enter or exit as participants walk by. Additionally, temporary barricades (i.e. safety cones, etc.) at the alleys are required.

9. Safety monitors, with aid of the Merced City Police Department if necessary, shall close and reopen the streets one block in advance and one block behind the Stations of the Cross procession and Silent March as they move through each City block.

10. The Merced City Police Department or their designee has the authority to immediately cancel all activities requested with this street closure if there is a police or other emergency incident in the area. Application fees are non-refundable.

11. Event sponsor shall be responsible for removing all equipment and disposing of any trash and debris within and around the closure area that is generated from the event prior to the expiration of the closure permit.

12. Alcoholic beverages may not be served or sold at this event.

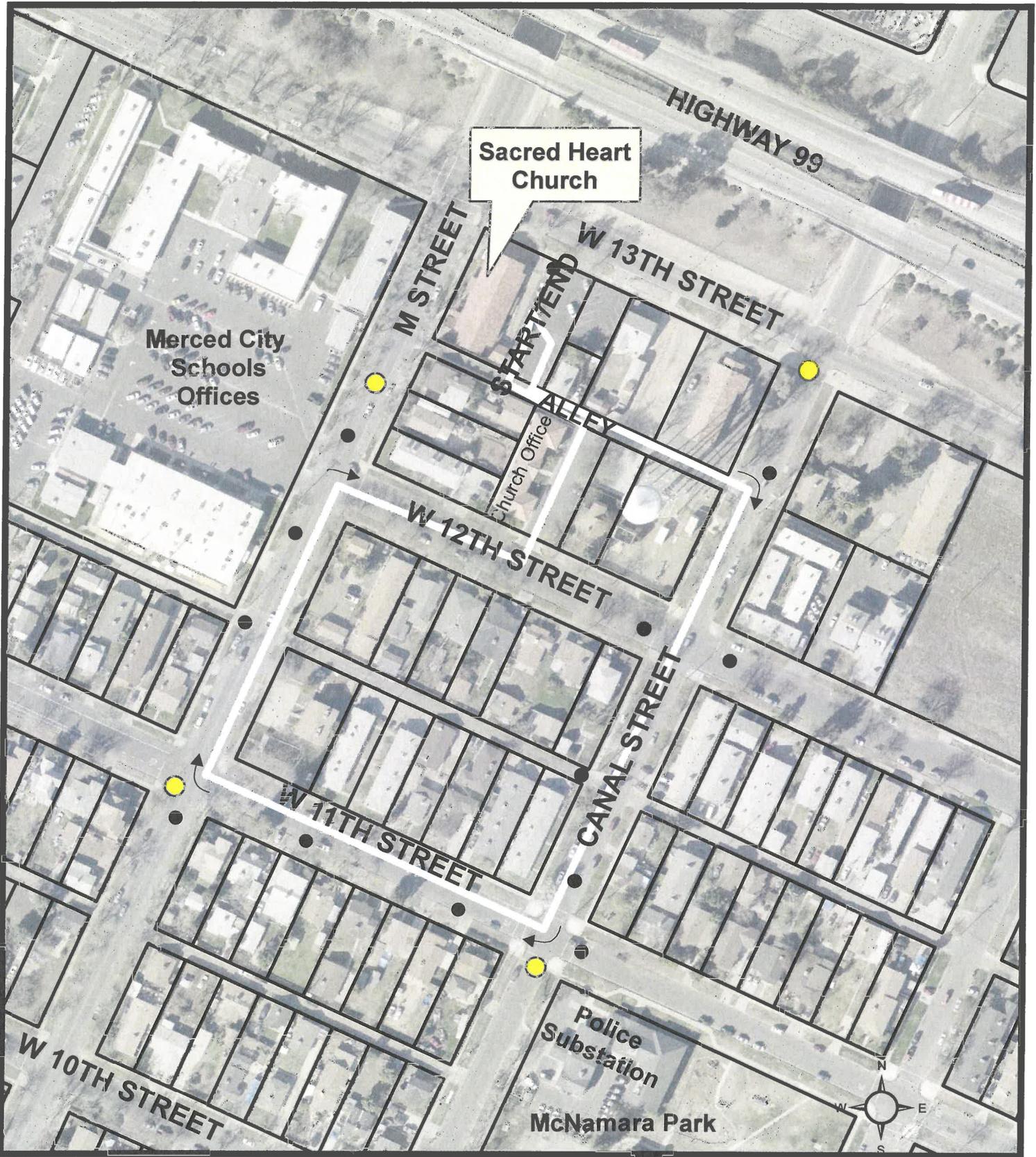
13. All other provisions addressed in Ordinance #1941 Chapter 12.42 (Temporary Street Closures) shall apply.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed. However, Police Department personnel will provide some traffic control at the event, diverting police resources from other areas of the City.

**ATTACHMENTS**

1. Street Closure Area
2. Notification of Pending Street Closure



Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

**ROUTE: STATIONS OF THE CROSS:  
& SILENT MARCH**  
**Street Closure #19-03**  
**Sacred Heart Catholic Church**  
**APRIL 19, 2019**

**3:00 pm - 4:00 pm & 7:00 pm - 8:00 pm**

**KEY:**  
 ● = Church Traffic Monitors  
 ● = Police Positions  
 (Locations approximate)

"Rolling Closure"  
 Clockwise route  
 Subject to change by Police  
 as needed on day of event

## NOTIFICATION OF PENDING STREET CLOSURE

This is to notify you of an event that will require the closure of street(s) in your area. Please note the details below, including the date and time of the closure(s), and plan to park your vehicle(s) off the affected street(s) on the day of the event. Your cooperation is greatly appreciated. If you have any concerns, please notify the contact person listed.

Name of Event: Good Friday Services Type of event (parade, etc.): Live Station of the Cross  
Contact Person: Eduwiges Guzman Phone Number: (209) 383-6604

Date(s) of closure: <u>April 19, 2019</u>	Time: between <u>3 am/pm</u> and <u>4 am/pm</u> <u>7 pm and 8 pm</u>
Streets to be closed: <u>Canal Street (from 13<sup>th</sup> to 11<sup>th</sup>), 11<sup>th</sup> St. (from Canal to M St.), M St. (from 11<sup>th</sup> to 13<sup>th</sup>), 12<sup>th</sup> (from M St. to Canal)</u>	
Other streets with restricted access: <u>alley behind church</u>	

**Please Note:** Event Sponsor is responsible for posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to any necessary towing of vehicle(s), per California Vehicle Code Section 22651(m).

To avoid having your vehicle towed, please keep this notice as a reminder and comply with the posted parking restrictions. If you are a business with employees, please notify your employees as soon as possible and post this notice in a conspicuous location. Thank you.

## NOTIFICATION OF PENDING STREET CLOSURE

This is to notify you of an event that will require the closure of street(s) in your area. Please note the details below, including the date and time of the closure(s), and plan to park your vehicle(s) off the affected street(s) on the day of the event. Your cooperation is greatly appreciated. If you have any concerns, please notify the contact person listed.

Name of Event: Good Friday Services Type of event (parade, etc.): Live Station of the Cross  
Contact Person: Eduwiges Guzman Phone Number: (209) 383-6604

Date(s) of closure: <u>April 19, 2019</u>	Time: between <u>3 am/pm</u> and <u>4 am/pm</u> <u>7 pm and 8 pm</u>
Streets to be closed: <u>Canal St. (from 13<sup>th</sup> to 11<sup>th</sup>), 11<sup>th</sup> St. (from Canal to M St.), M St. (from 11<sup>th</sup> to 13<sup>th</sup>), 12<sup>th</sup> St. (from M St. to Canal)</u>	
Other streets with restricted access: <u>alley behind church</u>	

**Please Note:** Event Sponsor is responsible for posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to any necessary towing of vehicle(s), per California Vehicle Code Section 22651(m).

To avoid having your vehicle towed, please keep this notice as a reminder and comply with the posted parking restrictions. If you are a business with employees, please notify your employees as soon as possible and post this notice in a conspicuous location. Thank you.

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**To be signed by Event Sponsor Representative after completion of required 72-hour notification and submitted to the City of Merced Planning Dept, City Hall (2<sup>nd</sup> Floor), 678 W. 18<sup>th</sup> Street, Merced.**

I have notified the required parties of the dates, times, and affected streets, as required.

Signed [Signature] Title: Priest Date: 01/14/19

**ATTACHMENT 2**



ADMINISTRATIVE REPORT

Agenda Item I.12.

Meeting Date: 3/4/2019

*Report Prepared by: Michael Hren, Principal Planner, Development Services Department*

**SUBJECT:** Second Reading and Adoption of Ordinance 2498 to Amend Section 20.44.170, "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required"

**REPORT IN BRIEF**

Adoption of previously introduced Ordinance to amend section 20.44.170, "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required" of the Merced Municipal Code.

**RECOMMENDATION**

**City Council** - Adopt a motion approving **Ordinance 2498**, an Ordinance of the City Council of the City of Merced, California, Amending Section 20.44.170, "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required," of the Merced Municipal Code.

**ALTERNATIVES**

1. Approve the Ordinance, as recommended by Planning Commission and staff; or,
2. Deny; or,
3. Refer to staff for reconsideration of specific items (to be addressed in the motion); or,
4. Continue to a future City Council meeting (date and time to be specified in the motion).

**AUTHORITY**

Merced Municipal Code Section 20.80, "Zoning Ordinance Amendments" spell out procedures for amending the Zoning Ordinance.

**CITY COUNCIL PRIORITIES**

Not applicable.

**DISCUSSION**

The City of Merced's regulations regarding commercial cannabis businesses have been in effect since January 3, 2018. In order to ensure that the City's process continues to function in an effective and timely fashion, amendments to the language are proposed. These amendments are based on a number of factors, including observation of the process since the initial implementation of the City of Merced's cannabis business application process and best practices learned from contact with other communities and professionals in the cannabis industry. At the City Council meeting on February 19, 2019, the Council recommended the modification of the definition of 'school' to require the use to be

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the primary use of the site and for a list of schools to be approved by the City Council at an additional Public Hearing, to be updated annually and as retail sales dispensary permits become available.

### Summary

The City is proposing various changes to what was adopted under Cannabis Ordinance #2480 in 2017. Changes include an addition of a fifth permit for a cannabis dispensary for retail sales, clarification of key definitions, modifications to the list of disqualifying factors for an application that can be discovered during a background check, clarifications and updates to the procedures undertaken in order to select applications to be recommended to the Planning Commission, updates to the method by which modifications to applications or permitted businesses can be undertaken, and other clarifications to bring the ordinance and the City's implementation of it in line with best practices, along with minor corrections for spelling, grammar, and formatting throughout Section 20.44.170.

### Proposed Changes to the Zoning Ordinance

The proposed zoning ordinance amendment (redline changes to the Ordinance are presented at Attachment 3) would do the following:

- 1) Increase the number of allowable commercial dispensaries for retail sale of cannabis from four (4) to five (5).
- 2) Change the point at which the City reviews sensitive uses for each application to the time at which an application is received. Previously, this point was the time at which a permit was issued.
- 3) Add a definition of "Greenhouse" that is inclusive of facilities using solely artificial light and facilities using mixed-light.
- 4) Update the definition of "Owner" and "Ownership interest" to include "entities" and note that persons holding 5% or greater financial interest in an entity that is an owner makes those persons owners of a cannabis business.
- 5) Add a definition of "Selection Panel."
- 6) Update the definition of "School" to eliminate a circular definition and prevent edge cases.
- 7) Update the validity of a Commercial Cannabis Business Permit issued on or after October 1 to be valid until December 31 of the following calendar year. Previously, such permits would expire on December 31 of the same calendar year.
- 8) Modify permittee requirements to inform the City in writing within ten (10) days of receipt of a State license. Previously, the requirement was to inform the City within ten (10) days of applying for a State license.
- 9) Give the Director of Development Services the discretion to grant an exception to fencing

requirements in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

- 10) Update the number of days the Director of Development Services has to notify applicants of deficiencies in applications to thirty (30) days, consistent with other City policies. Previously, the Director of Development Services had twenty-one (21) days to do so.
- 11) Give the Chief of Police discretion to disqualify an applicant if any of the following are discovered upon completion of the comprehensive background check: any civil judgment(s) against any owner for torts involving dishonesty including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties; any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.
- 12) Update the Zoning Clearance provided by the Zoning Administrator during the Phase I process to be a Provisional Zoning Clearance, and add that it shall be subject to final approval by the Planning Commission. The Zoning Clearance confirms that the application is outside of the buffer zones from sensitive uses, such as schools, and adheres to all other zoning requirements.
- 13) Update the scoring process for ranking of applicants consistent with established practice from previously approved permits, as well as noting that the existing ranking list expires on September 20, 2019, and that future ranking lists created after that date shall expire 180 days after the issuance of the last available Commercial Cannabis Business Permit.
- 14) Require the Planning Commission to review only the Commercial Cannabis Business Permit application(s) for Dispensaries/Retail Sales recommended by the Selection Panel. Previously, the requirement was for "all" such applications to be reviewed.
- 15) Add language to sections discussing disqualification of applicants requiring notice to be provided to the applicant within ten (10) days, and noting that there shall be no further right to appeal the disqualification.
- 16) Add a section relating to modifications of pending applications, allowing minor modifications to such things as name or structure of business, change in ownership, floor/site/elevation plans, operation/security procedures, and modifications to the parcel on which the proposed business is located.
- 17) Add a section relating to modifications of approved permits consistent with #16 above, with the addition of location changes, with the approval of the Planning Commission at a public hearing.
- 18) Update numbering, references, spelling, grammar, and formatting throughout Section 20.44.170.

#### Planning Commission Recommendation

At the January 23, 2019, public hearing of the Planning Commission, the Commission voted 5-2 (5 ayes, 2 noes) to recommend approval of the Zoning Ordinance Amendment as proposed. See

Attachments 1 and 2 for the Planning Commission Staff Report and Resolution.

After the Planning Commission's review and recommendation, staff noted that a number of passages of the proposed Ordinance followed the format, "[Position Title] or his designee." Staff has updated the proposed Ordinance to follow the format, "[Position Title] or designee," instead.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

### **ATTACHMENTS**

1. Ordinance Redline Version
2. Ordinance 2498

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING SECTION 20.44.170, “REGULATION  
OF COMMERCIAL CANNABIS ACTIVITIES –  
COMMERCIAL CANNABIS BUSINESS PERMIT  
REQUIRED,” OF THE MERCED MUNICIPAL  
CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Section 20.44.170,  
“Regulation of Commercial Cannabis Activities – Commercial Cannabis Permit  
Required,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.44.170 - REGULATION OF COMMERCIAL  
CANNABIS ACTIVITIES - COMMERCIAL  
CANNABIS BUSINESS PERMIT REQUIRED**

**A. Zoning Compliance and Commercial Cannabis  
Business Permit Requirements**

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, 1-L and 1-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – ‘X’, or permitted – ‘P’. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1							Additional Specific Use Standards
	Land Use Classification [4][5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(k)

## **Footnotes**

1. Only five (5) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced at any one time.
2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.
3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).
4. If listed as ‘Permitted’ in a specific zone above, then that use is also ‘Permitted’ in Planned Development (P-0) zones that have the equivalent General Plan land use designation as that zone.
5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f).

**Land Use Classifications:**

Greenhouse, Commercial A - Permitted cultivation area:  
0 to 5,000 square feet

Greenhouse, Commercial B - Permitted cultivation area:  
5,001 to 10,000 square feet

Greenhouse, Commercial C - Permitted cultivation area:  
10,000 to 22,000 square feet

Greenhouse, Commercial D - Permitted cultivation area:  
22,000 square feet

**B. Cultivation of Cannabis for Personal Use in Residential Zones**

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(j) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to

deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO<sub>2</sub>, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic,

vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

### **C. Definitions**

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **‘Applicant’** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **‘Cannabis’** means all parts of the Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from marijuana. ‘Cannabis’ also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, ‘cannabis’ does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **‘Cannabis waste’** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **‘Canopy’** means all of the following:

a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **‘City’** means the City of Merced.

6. **‘Commercial cannabis business permit (CCBP)’** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **‘Commercial cannabis activity’** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **‘Commercial vehicle’** means a vehicle as defined in Vehicle Code section 260.

9. **‘Concentrated cannabis product’** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **‘Cultivation’** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **‘Customer’** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **‘Day Care Center’** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities,

and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **‘Delivery’** means the commercial transfer of marijuana or marijuana products to a customer. ‘Delivery’ also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

14. **‘Delivery employee’** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **‘Dispensary’** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **‘Display’** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **‘Display case’** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **‘Distribution’** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **‘Edible cannabis product’** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **‘Fully Enclosed and Secure Structure’** means a fully-enclosed space within a building that complies with the California Building Code (‘CBSC’), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **‘Free sample’** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **‘Greenhouse’** means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a ‘Fully Enclosed and Secure Structure’ as defined above in 20.44.170(C), Subsection 20.

23. **‘Indoors’** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 20.
24. **‘License’** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.
25. **‘Limited-access area’** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.
26. **‘Medical’** or **‘Medicinal’** have the same meaning under the terms of this ordinance.
27. **‘Medical cannabis goods’** means cannabis, including dried flower, and manufactured cannabis products.
28. **‘Medical cannabis patient’** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.
29. **‘Manufacturer’** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.
30. **‘Manufacturing’** or **‘manufacturing operation’** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products.

Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

31. **‘Nonvolatile solvent’** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.

32. **‘Operating hours’** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.

33. **‘Owner’ or ‘Ownership interest’** means an interest held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an ‘owner’ of the commercial cannabis business.

34. **‘Package’ and ‘Packaging’** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. ‘Package’ and ‘packaging’ does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

35. **‘Patient or qualified patient’** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

36. **‘Person’** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust,

receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

37. **‘Pest’** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

38. **‘Physician's recommendation’** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

39. **‘Premises’** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

40. **‘Pre-roll’** means dried cannabis flower rolled in paper prior to retail sale.

41. **‘Primary Caregiver’** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

42. **‘Private security officer’** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.

43. **‘Publicly owned land’** means any building or real property that is owned by a city, county, state, federal, or other government entity.

44. **‘Purchase’** means obtaining cannabis goods in exchange for consideration.

45. **‘Purchaser’** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

46. **‘Quarantine’** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

47. **‘Retail area’** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

48. ~~**‘School’** means any site upon which full-time instruction in any of grades K through 12 is provided. ‘School’ does not include any private site in which education is primarily conducted in private homes.~~

**‘School’** means those sites upon which full-time instruction in any of grades K through 12 is provided where the primary purpose is education, and which are identified as a school on the City’s official “List of Schools” as provided in Section 20.44.170(E)(3)(f)(i). **‘School’** does not include any private site upon which education is primarily conducted in private homes.

49. **‘Security monitoring’** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

50. **‘Selection Panel’** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

51. **‘Sell,’ ‘sale,’** and **‘to sell’** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving

an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.

52. **‘Sublet’** means to lease or rent all or part of a leased or rented property.

53. **‘State’** means the State of California.

54. **‘Testing Laboratory’** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

55. **‘Vehicle alarm system’** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

56. **‘Volatile solvent’** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

57. **‘Wholesale’** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

58. **‘Youth Center’** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement

park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

#### **D. Compliance with State and Local Licensing Requirements**

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

#### **E. General Provisions for Commercial Cannabis Activities in the City of Merced**

##### **1. Commercial Cannabis Business Permit Required**

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define

and as they may be amended. Following is a list of current license types:

- i. Cultivation
- ii. Distribution
- iii. Manufacturing
- iv. Retail sales (Dispensary)
- v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity

owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

- i. A felony offense listed in California Health and Safety Code Section 11590.
- ii. A felony offense listed in California Penal Code Section 667.S(c).
- iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.
- iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.
- v. A felony conviction involving fraud, deceit, or embezzlement.
- vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7), and does not run with the land or with the business.

## 2. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

j. Proof of insurance.

### 3. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a

period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted to the City. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

(i) The City shall establish an official “List of Schools” which are located within the City of Merced by resolution of the City Council after a public hearing. Said list shall be updated on an

annual basis on or before January 31<sup>st</sup> of each year, and/or whenever a commercial cannabis business permit for a dispensary becomes available.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the

use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed 'abandoned' and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an 'A' rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's 'doing business as' name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. Said

notification shall be addressed to the Director of Development Services or designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

- i. Emergency action response planning as necessary
- ii. Employee accident reporting and investigation policies
- iii. Fire prevention
- iv. Hazard communication policies, including maintenance of material safety data sheets
- v. Materials storage and handling policies
- vi. Personal protective equipment policies
- vii. Operation manager contacts
- viii. Emergency responder contacts
- ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

**F. Additional Regulations for Dispensary and Retail Sales of Cannabis**

1. Only five (5) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall

also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.
3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.
4. Restrooms shall remain locked during business hours and not open to the public.
5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.
6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.
7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.
8. Security guards are permitted, but not mandated, to carry firearms.
9. All cannabis products available for sale shall be securely locked and stored

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.

11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 9 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis

dispensary: ‘Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited.’

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis. A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive-through facility.

#### **G. Additional Regulations for Commercial Cannabis Delivery Services**

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of \$1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and

shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed \$3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

- a. Name and address of the licensed dispensary;
- b. The name of the employee who delivered the order;
- c. The date and time the delivery request was made;
- d. The complete delivery address;
- e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;
- f. The total amount paid for the delivery including any fees or taxes; and
- g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the ‘Prohibited Conduct Involving Marijuana and Marijuana Products’ contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

#### **H. Additional Requirements for Manufactured Cannabis Businesses**

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.

2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.
3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.
4. Inspections by the City Fire Chief or designee may be conducting anytime during the business's regular business hours.
5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. \_Outdoor manufacturing of cannabis is expressly prohibited.

## **I. Additional Requirements for Cannabis Cultivation Businesses**

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.
2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.
5. All outdoor lighting used for security purposes shall be shielded and downward facing.
6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.
7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security

measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

**J. Additional Requirements for Cannabis Testing Laboratory Businesses**

1. A licensed cannabis testing facility shall comply with all State regulations.
2. Any cannabis testing facility shall maintain all certifications required by the State.
3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.
4. Inspections by the City Fire Chief or designee may be conducted anytime during the business's regular business hours.

**K. Additional Requirements for Cannabis Distribution Businesses**

1. A licensed cannabis distribution facility shall comply with all State regulations.
2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.
3. Inspections by the City Police Chief or designee may be conducted anytime during the business's regular business hours.
4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.

5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:

a. The manufacturer or cultivator's name and license number;

b. The date of entry into the distributor's storage area;

c. The unique identifiers and batch number associated with the batch;

d. A description of the cannabis goods with enough detail to easily identify the batch; and

e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully

encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,

a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and

b. All loading and unloading activities shall take place within the secured fenced area required above.

## **L. Commercial Cannabis Business Permit Selection Process**

### **1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)**

a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The City of Merced has established a merit based scoring system to objectively award permits as described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales'. The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be

extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for Dispensaries/Retail Sales' and entered into the Phase 2 review process. These requirements include but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period.
- iii. Application forms are filled out completely;
- iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all

sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-  
Dispensaries/Retail Sales Selection - Phase 2 - Final  
Review and Scoring.

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
  - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
  - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
  - c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
  
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District;
  
  - b. The location of the cannabis business meets the distance requirements from sensitive uses;
  
  - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
  
  - d. No zoning violations exist on the property;
  
  - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
  
  - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

- iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019 and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20, 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed 180 days from the date the last available Commercial Cannabis Business Permit-Dispensaries/Retail is issued by the Planning Commission. The City shall have no further

obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business Permit- Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit-Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

**2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)**

a. The Commercial Cannabis Business Permit-All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be

scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the ‘Qualified Commercial Cannabis Business Application List-All Other Cannabis Businesses’ and shall be notified in writing that they are a ‘Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses’. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the ‘Qualified Application List for All Other Cannabis Businesses’.

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent

consideration of that same or similar proposal at the same location.

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 1 - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for All Other Cannabis Businesses' and entered into the Phase 2 review process. These requirements include, but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period;
- iii. Application forms are filled out completely;
- iv. Business Owner(s) I Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

**f. Commercial Cannabis Business Permit-  
All Other Cannabis Businesses Selection - Phase 2 -  
Final Review**

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
  - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
  - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
  - c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
  
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District;
  
  - b. The use meets the distance requirements from sensitive uses;
  
  - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
  
  - d. No zoning violations exist on the property;
  
  - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
  
  - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and reviewing the foregoing information will make a recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

#### 4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted, as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any 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 within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance;

- ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity;
- iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee;
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;
- vi. Violates or fails to comply with the terms and conditions of the permit; or
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted,

the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

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 within thirty (30) calendar days of receiving the appeal.
- ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.

- 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 within thirty (30) calendar days of receiving the appeal.
  - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
  - d. Any interested person may appear and be heard regarding the appeal.
  - e. A matter being heard on appeal may be continued for good cause.
  - f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de nova review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil

Procedure Sections 1094.5 and  
1094.6.

7. Modifications to Commercial Cannabis Business  
Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the

parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

#### 8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance.
- ii. Violates any other provision of this section or any City of Merced or State law, statute,

rule or regulation relating to the business's permitted activity.

- iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
- vi. Violates or fails to comply with the terms and conditions of the permit.
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

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 within (thirty) 30 days of receiving the appeal.
- ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.
- 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 within thirty (30) calendar days of receiving the appeal.
  - c. Notice of the hearing of the appeal shall be provided to the

applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

#### **M. Limitations on the City's Liability**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the

applicant or permittee or its members for violation of federal or State laws;

2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;

3. Name the city as an additionally insured on all City required insurance policies;

4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and

5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

#### **N. Enforcement**

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.

2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:

a. A discrepancy of more than \$1,000 in inventory over a period of 24 hours or \$3,000 over period of 7 days.

b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the

amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

## **O. Fees and Taxes**

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. **Initial Application Fees.** The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).
2. **Application Renewal Fees.** The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.
3. **Business License Fee.** The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.
4. **Commercial Cannabis Regulatory Fee.** The Business Owner shall pay an annual regulatory fee ('Regulatory Fee') to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or

before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

5. All required taxes including sales and use taxes, business, payroll etc.

6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced.”

**SECTION 2. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 3. 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 4. 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 \_\_\_\_\_, 2019, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2019, by the following called vote:

**AYES: Council Members:**

**NOES: Council Members:**

**ABSTAIN: Council Members:**

**ABSENT: Council Members:**

**APPROVED:**

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**Mayor**

**ATTEST:  
STEVE CARRIGAN, CITY CLERK**

**BY: \_\_\_\_\_  
Assistant/Deputy City Clerk**

**(SEAL)**

**APPROVED AS TO FORM:**

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**City Attorney                      Date**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING SECTION 20.44.170, “REGULATION  
OF COMMERCIAL CANNABIS ACTIVITIES –  
COMMERCIAL CANNABIS BUSINESS PERMIT  
REQUIRED,” OF THE MERCED MUNICIPAL  
CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Section 20.44.170,  
“Regulation of Commercial Cannabis Activities – Commercial Cannabis Permit  
Required,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.44.170 - REGULATION OF COMMERCIAL  
CANNABIS ACTIVITIES - COMMERCIAL  
CANNABIS BUSINESS PERMIT REQUIRED**

**A. Zoning Compliance and Commercial Cannabis  
Business Permit Requirements**

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, 1-L and 1-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – ‘X’, or permitted – ‘P’. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1							Additional Specific Use Standards
	Land Use Classification [4][5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(k)

## **Footnotes**

1. Only five (5) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced at any one time.
2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.
3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).
4. If listed as 'Permitted' in a specific zone above, then that use is also 'Permitted' in Planned Development (P-0) zones that have the equivalent General Plan land use designation as that zone.
5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f).

### **Land Use Classifications:**

Greenhouse, Commercial A - Permitted cultivation area:  
0 to 5,000 square feet

Greenhouse, Commercial B - Permitted cultivation area:  
5,001 to 10,000 square feet

Greenhouse, Commercial C - Permitted cultivation area:  
10,000 to 22,000 square feet

Greenhouse, Commercial D - Permitted cultivation area:  
22,000 square feet

### **B. Cultivation of Cannabis for Personal Use in Residential Zones**

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(j) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to

deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO<sub>2</sub>, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic,

vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

- i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.
- ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

### **C. Definitions**

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **‘Applicant’** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **‘Cannabis’** means all parts of the Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from marijuana. ‘Cannabis’ also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, ‘cannabis’ does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **‘Cannabis waste’** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **‘Canopy’** means all of the following:

a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **‘City’** means the City of Merced.

6. **‘Commercial cannabis business permit (CCBP)’** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **‘Commercial cannabis activity’** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **‘Commercial vehicle’** means a vehicle as defined in Vehicle Code section 260.

9. **‘Concentrated cannabis product’** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **‘Cultivation’** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **‘Customer’** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **‘Day Care Center’** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities,

and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **‘Delivery’** means the commercial transfer of marijuana or marijuana products to a customer. ‘Delivery’ also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

14. **‘Delivery employee’** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **‘Dispensary’** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **‘Display’** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **‘Display case’** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **‘Distribution’** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **‘Edible cannabis product’** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **‘Fully Enclosed and Secure Structure’** means a fully-enclosed space within a building that complies with the California Building Code (‘CBSC’), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **‘Free sample’** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **‘Greenhouse’** means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a ‘Fully Enclosed and Secure Structure’ as defined above in 20.44.170(C), Subsection 20.

23. **‘Indoors’** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 20.
24. **‘License’** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.
25. **‘Limited-access area’** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.
26. **‘Medical’** or **‘Medicinal’** have the same meaning under the terms of this ordinance.
27. **‘Medical cannabis goods’** means cannabis, including dried flower, and manufactured cannabis products.
28. **‘Medical cannabis patient’** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.
29. **‘Manufacturer’** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.
30. **‘Manufacturing’** or **‘manufacturing operation’** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products.

Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

31. **‘Nonvolatile solvent’** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.

32. **‘Operating hours’** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.

33. **‘Owner’ or ‘Ownership interest’** means an interest held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an ‘owner’ of the commercial cannabis business.

34. **‘Package’ and ‘Packaging’** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. ‘Package’ and ‘packaging’ does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

35. **‘Patient or qualified patient’** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

36. **‘Person’** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust,

receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

37. **‘Pest’** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

38. **‘Physician's recommendation’** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

39. **‘Premises’** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

40. **‘Pre-roll’** means dried cannabis flower rolled in paper prior to retail sale.

41. **‘Primary Caregiver’** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

42. **‘Private security officer’** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.

43. **‘Publicly owned land’** means any building or real property that is owned by a city, county, state, federal, or other government entity.

44. **‘Purchase’** means obtaining cannabis goods in exchange for consideration.

45. **‘Purchaser’** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

46. **‘Quarantine’** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

47. **‘Retail area’** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

48. **‘School’** means those sites upon which full-time instruction in any of grades K through 12 is provided where the primary purpose is education, and which are identified as a school on the City’s official “List of Schools” as provided in Section 20.44.170(E)(3)(f)(i). ‘School’ does not include any private site upon which education is primarily conducted in private homes.

49. **‘Security monitoring’** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

50. **‘Selection Panel’** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

51. **‘Sell,’ ‘sale,’ and ‘to sell’** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.

52. **‘Sublet’** means to lease or rent all or part of a leased or rented property.
53. **‘State’** means the State of California.
54. **‘Testing Laboratory’** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.
55. **‘Vehicle alarm system’** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.
56. **‘Volatile solvent’** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.
57. **‘Wholesale’** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.
58. **‘Youth Center’** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

#### **D. Compliance with State and Local Licensing Requirements**

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

#### **E. General Provisions for Commercial Cannabis Activities in the City of Merced**

##### **1. Commercial Cannabis Business Permit Required**

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

- i. Cultivation
- ii. Distribution
- iii. Manufacturing
- iv. Retail sales (Dispensary)
- v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a

previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

- i. A felony offense listed in California Health and Safety Code Section 11590.
- ii. A felony offense listed in California Penal Code Section 667.5(c).
- iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.
- iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.
- v. A felony conviction involving fraud, deceit, or embezzlement.
- vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced

Municipal Code Section 20.44.170(L)(7), and does not run with the land or with the business.

## 2. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

j. Proof of insurance.

### 3. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a

period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted to the City. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

(i) The City shall establish an official "List of Schools" which are located within the City of Merced by resolution of the City Council after a public hearing. Said list shall be updated on an

annual basis on or before January 31<sup>st</sup> of each year, and/or whenever a commercial cannabis business permit for a dispensary becomes available.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the

use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed ‘abandoned’ and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an 'A' rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's 'doing business as' name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. Said

notification shall be addressed to the Director of Development Services or designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

- i. Emergency action response planning as necessary
- ii. Employee accident reporting and investigation policies
- iii. Fire prevention
- iv. Hazard communication policies, including maintenance of material safety data sheets
- v. Materials storage and handling policies
- vi. Personal protective equipment policies
- vii. Operation manager contacts
- viii. Emergency responder contacts
- ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

#### **F. Additional Regulations for Dispensary and Retail Sales of Cannabis**

1. Only five (5) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall

also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.
3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.
4. Restrooms shall remain locked during business hours and not open to the public.
5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.
6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.
7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.
8. Security guards are permitted, but not mandated, to carry firearms.
9. All cannabis products available for sale shall be securely locked and stored

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.

11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 9 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis

dispensary: 'Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited.'

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis. A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive-through facility.

#### **G. Additional Regulations for Commercial Cannabis Delivery Services**

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of \$1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and

shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed \$3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

- a. Name and address of the licensed dispensary;
- b. The name of the employee who delivered the order;
- c. The date and time the delivery request was made;
- d. The complete delivery address;
- e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;
- f. The total amount paid for the delivery including any fees or taxes; and
- g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the ‘Prohibited Conduct Involving Marijuana and Marijuana Products’ contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

**H. Additional Requirements for Manufactured Cannabis Businesses**

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.

2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.
3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.
4. Inspections by the City Fire Chief or designee may be conducting anytime during the business's regular business hours.
5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor manufacturing of cannabis is expressly prohibited.

## **I. Additional Requirements for Cannabis Cultivation Businesses**

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.
2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.
5. All outdoor lighting used for security purposes shall be shielded and downward facing.
6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.
7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the

discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

**J. Additional Requirements for Cannabis Testing Laboratory Businesses**

1. A licensed cannabis testing facility shall comply with all State regulations.
2. Any cannabis testing facility shall maintain all certifications required by the State.
3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.
4. Inspections by the City Fire Chief or designee may be conducted anytime during the business's regular business hours.

**K. Additional Requirements for Cannabis Distribution Businesses**

1. A licensed cannabis distribution facility shall comply with all State regulations.
2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.
3. Inspections by the City Police Chief or designee may be conducted anytime during the business's regular business hours.

4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.

5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:

a. The manufacturer or cultivator's name and license number;

b. The date of entry into the distributor's storage area;

c. The unique identifiers and batch number associated with the batch;

d. A description of the cannabis goods with enough detail to easily identify the batch; and

e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,

a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and

b. All loading and unloading activities shall take place within the secured fenced area required above.

## **L. Commercial Cannabis Business Permit Selection Process**

### **1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)**

a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed

for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The City of Merced has established a merit based scoring system to objectively award permits as described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales'. The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant

will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for Dispensaries/Retail Sales' and entered into the Phase 2 review process. These requirements include but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period.
- iii. Application forms are filled out completely;
- iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning

criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-  
Dispensaries/Retail Sales Selection - Phase 2 - Final  
Review and Scoring.

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
  - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
  - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
  - c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the

Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District;
  - b. The location of the cannabis business meets the distance requirements from sensitive uses;
  - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
  - d. No zoning violations exist on the property;
  - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and

- f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.
  
- iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning

Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019 and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20, 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be

valid for a period not to exceed 180 days from the date the last available Commercial Cannabis Business Permit- Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit- Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business Permit- Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit- Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

**2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)**

a. The Commercial Cannabis Business Permit- All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the ‘Qualified Commercial Cannabis Business Application List-All Other Cannabis Businesses’ and shall be notified in writing that they are a ‘Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses’. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the ‘Qualified Application List for All Other Cannabis Businesses’.

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of

Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 1 - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the ‘Qualified Applicant List for All Other Cannabis Businesses’ and entered into the Phase 2 review process. These requirements include, but are not limited to:

- i. All Application documents required in the City's Phase 1 application package;
- ii. Application was submitted during the application period;
- iii. Application forms are filled out completely;
- iv. Business Owner(s) I Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application;
- v. Phase 1 application fee is paid; and
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

**f. Commercial Cannabis Business Permit-  
All Other Cannabis Businesses Selection - Phase 2 -  
Final Review**

Phase 2 requirements include, but are not limited to:

- i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:
  - a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;
  - b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or
  - c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
  
- iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District;
  
  - b. The use meets the distance requirements from sensitive uses;
  
  - c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
  
  - d. No zoning violations exist on the property;
  
  - e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and
  
  - f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

- iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and reviewing the foregoing information will make a recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

#### 4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted, as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any 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 within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance;

- ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity;
- iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee;
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;
- vi. Violates or fails to comply with the terms and conditions of the permit; or
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted,

the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

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 within thirty (30) calendar days of receiving the appeal.
- ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.

- 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 within thirty (30) calendar days of receiving the appeal.
  - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
  - d. Any interested person may appear and be heard regarding the appeal.
  - e. A matter being heard on appeal may be continued for good cause.
  - f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de nova review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil

Procedure Sections 1094.5 and  
1094.6.

7. Modifications to Commercial Cannabis Business  
Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

- i. A change to the name of the proposed business and/or entity;
- ii. A change in the organizational structure of a proposed business;
- iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);
- iv. A change in building elevations, floor plans, or site plans;
- v. A change in operational procedures or security plans or procedures;
- vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the

parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

#### 8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

- i. Any act which would be considered a ground for denial of the permit in the first instance.
- ii. Violates any other provision of this section or any City of Merced or State law, statute,

rule or regulation relating to the business's permitted activity.

- iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.
- iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
- vi. Violates or fails to comply with the terms and conditions of the permit.
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

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 within (thirty) 30 days of receiving the appeal.
- ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.
- iii. Any interested person may appear and be heard regarding the appeal.
- iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
- v. A matter being heard on appeal may be continued for good cause.
- 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 within thirty (30) calendar days of receiving the appeal.
  - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

- d. Any interested person may appear and be heard regarding the appeal.
- e. A matter being heard on appeal may be continued for good cause.
- f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

**M. Limitations on the City's Liability**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

- 1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;

2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;
3. Name the city as an additionally insured on all City required insurance policies;
4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and
5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

**N. Enforcement**

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.
2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:
  - a. A discrepancy of more than \$1,000 in inventory over a period of 24 hours or \$3,000 over period of 7 days.
  - b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the

destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

#### **O. Fees and Taxes**

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. **Initial Application Fees.** The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).
2. **Application Renewal Fees.** The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.
3. **Business License Fee.** The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.
4. **Commercial Cannabis Regulatory Fee.** The Business Owner shall pay an annual regulatory fee ('Regulatory Fee') to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.
5. **All required taxes including sales and use taxes, business, payroll etc.**

6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced.”

**SECTION 2. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 3. 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 4. 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 \_\_\_\_\_, 2019, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2019, 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/Deputy City Clerk**

**(SEAL)**

**APPROVED AS TO FORM:**

Shirley Ann      2-26-19  
**City Attorney**      **Date**



## ADMINISTRATIVE REPORT

**Agenda Item J.1.**

Meeting Date: 3/4/2019

*Report Prepared by: Julie Nelson, Associate Planner, Development Services Department*

**SUBJECT:** Public Hearing - Introduction of Ordinance Approving a Mitigated Negative Declaration for Environmental Review #18-02 and Site Utilization Plan Revision #38 to Planned Development (P-D) #1 Allowing the Renovation of the Merced Mall and Theatre, Including the Possibility of Relocating the Theatre Adjacent to the Merced Mall Building

### REPORT IN BRIEF

Introduces Ordinance No. 2499 and considers approving a Site Utilization Plan Revision for Planned Development (P-D) #1, a Mitigated Negative Declaration for Environmental Review #8-02 and Site Utilization Plan #38 allowing renovations to the Merced Mall located at 851 West Olive Avenue and the United Artists movie theater located at 645 Fairfield Drive, including possible relocation.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Introducing **Ordinance 2499**, an Ordinance of the City of Merced, California approving a Mitigated Negative Declaration for Environmental Review #18-02 and Site Utilization Plan Revision #38 to Planned Development (P-D) #1 allowing the Renovation of the Merced Mall and Theatre, including the possibility of relocating the theatre adjacent to the Merced Mall building.
- B. Authorizing the City Manager or the Assistant City Manager to execute the Legislative Action Agreement.

### ALTERNATIVES

1. Approve as recommended by the Planning Commission and staff; or,
2. Approve, subject to modifications by the City Council; or,
3. Deny; or,
4. Refer back to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in motion).

### AUTHORITY

Merced Municipal Code Section 20.20.020 (N) grants the City Council authority to approve revisions to a Planned Development.

### CITY COUNCIL PRIORITIES

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FY 2018/19 Council Goals and Priorities identifies “Economic Development” under “Future Planning.”

## **DISCUSSION**

The Merced Mall, located at 851 West Olive Avenue (Attachment 1), is seeking approval for a renovation and expansion of their existing building, including the possibility of relocating the theater adjacent to the Mall building. The proposed renovation would add additional floor area to the Mall and the theater. The proposed renovation would be done in two phases and would include the parcel where the Mall is located (APN: 236-220-038) along with the parcels where the theater and Michael’s are located as well as the retail space adjacent to Big Lots (APN’s: 236-220-016; -015; -014) (refer to the map at Attachment 2). A description of each phase as well as the two Alternatives proposed for Phase II are provided below.

### *Phase I*

Phase I of the proposed project would expand the buildings located along the southern elevation of the shopping center south towards West Olive Avenue by an additional 80 feet (Attachment 3). The new frontage would be constructed in an updated and contemporary design. The height of the new frontage would increase the building mass and would be approximately 50 feet tall. This would increase the gross leasable area (GLA) of the project site by approximately 50,000 square feet. The southern parking lot would be reconfigured, repaved, restriped, and relandscaped. The total parking within the project site under Phase I would decrease by 232 parking spaces for a total of 2,867 parking spaces.

### *Phase II*

Phase II of the proposed project would include construction of a 72,000-square-foot movie theater containing up to 3,000 seats. The project applicant has proposed two alternatives under Phase II which would result in the location of a new movie theater at one of two locations within the project site.

#### *Phase II, Alternative 1*

Phase II, Alternative 1, would add an at-grade 72,000-square-foot theater between the existing JC Penny and Kohl’s stores in the main shopping center building (Attachment 4). In addition, this Phase would remove the enclosed mall roof between JC Penney and Kohl’s, and result in a pedestrian mall and open courtyard in front of the new theater. The design and height of the movie theater addition would be integrated into the existing shopping center building and would be consistent with the exterior additions completed under Phase I. The height of the movie theater would be approximately 50 feet. The existing United Artists movie theater would be demolished and replaced with a new retail building of similar size. The total GLA of the project site after Phase I and Phase II, Alternative 1, would be approximately 660,097 square feet. The total number of parking spaces within the project site following completion of Phase I and Phase II, Alternative 1, would decrease by 232 parking spaces for a total of 2,810 parking spaces.

#### *Phase II, Alternative 2*

Phase II, Alternative 2, would demolish the existing United Artists Theater and two retail stores located along the eastern boundary of the project site and would construct a 72,000-square-foot at-grade theater at that location (Attachment 5). The design and height of the movie theater would be consistent with the exterior additions completed under Phase I and would be approximately 50 feet tall. The existing theater is approximately 22,680 square feet in size, and the existing retail stores are approximately 25,416 square feet in size. As a result, the total GLA would increase by approximately 23,904 square feet for a total GLA of 612,001 square feet under Phase I and Phase II, Alternative 2. Construction of Phase II, Alternative 2, would include reconfigured parking for the theater. The existing 3,099 parking spaces would decrease by 124 parking spaces under Phase I and Phase II, Alternative 2, resulting in a total of 2,975 parking spaces.

### Traffic/Circulation

The proposed renovation does not include any changes to the access and driveways to the site. The project site currently has 11 vehicle ingress/egress driveways providing access to and from West Olive Avenue, R Street, Loughborough Drive, and Fairfield Drive. As noted above, the parking lot facing West Olive Avenue would be reconfigured, repaved, and restriped with the renovation.

As part of the Environmental Review process for this project, a Traffic Impact Analysis was prepared by LSA Associates, Inc. (Initial Study #18-02, including the traffic analysis at Appendix C, is available for review on the City's website or in the City Clerk's office). The traffic analysis concluded that the proposed changes would not result in a decrease to the Level of Service (LOS) for the roadways and intersections studied. Although, one intersection - Olive Avenue and Pepperwood Lane - currently operates at an LOS F, which is below the City Standard of LOS D. However, since the major street (Olive Avenue) at this intersection has unimpeded through movements on low delays; for this reason, the impact at this intersection would not be considered a significant CEQA impact. Therefore, the City does not recommend any mitigation for this intersection. All other study intersections are forecast to operate at a satisfactory LOS in all scenarios and no significant delay is forecast at any of the signalized intersections. Additionally, all roadway segments would operate at an LOS D or better.

For additional information regarding the traffic analysis, please refer to the "Traffic/Circulation" section of Planning Commission Staff Report #19-04 at Attachment 9.

### Parking

Parking for the site would be modified with both Phase 1 and Phase 2 (either alternative). With the additional floor area being added, additional parking spaces are required. However, based on the existing number of spaces, there would still be sufficient parking available to meet the demands of the uses within the Mall and the theater. For more information on the parking changes and parking requirements, please refer to the Planning Commission Staff Report #19-04 at Attachment 9.

### Building Design

#### Phase 1

The existing Mall structure would remain, but would be modified and updated to a more contemporary look. The proposed improvements for Phase I would include extending the southern

elevation to the south approximately 80 feet to add additional floor and pedestrian area. The vacant retail space located to the east of the main Mall entrance (previously occupied by CVS) would be reconfigured and leased to new retailers and restaurants, some of which would have storefronts facing the parking lot adjacent to West Olive Avenue. Refer to Attachment 6 for the conceptual design of the building elevations for Phase 1 and Phase II, Alternative 1.

The building elevations would be updated to a more contemporary design. Instead of the elevations being a consistent color and design, there will be a mixture of materials and colors, as well as the use of awnings and other architectural features to provide a more interesting and appealing aesthetic. The height of the new frontage would increase the building mass and would be approximately 50 feet tall.

### Phase II

Phase II, Alternative 1, would add the theater to the existing building between JC Penny's and Kohl's Department Stores. The roof would be opened to create a pedestrian Mall and open courtyard in front of the new theater. The height of the new theater would be approximately 50 feet tall and would continue the use of a more modern design for the building elevations.

Phase II, Alternative 2, would demolish the existing theater and two retail spaces to the east of the Merced Mall. Specific elevations for the proposed 70,000 square-foot theater have not been provided, the design and height of the movie theater would be consistent with the exterior additions completed under Phase I and would be approximately 50 feet tall.

The building elevations and site design at Attachments 3 through 6 are very preliminary and conceptual only. The final designs would be approved by the Site Plan Review Committee prior to building permit issuance (Condition #10 of Planning Commission Resolution #4014, Attachment 7).

### Site Design

The general layout of the site would not be changed with the proposed renovations. The driveway access would remain the same as well as the location of the parking areas. However, the parking lot on the south side of the Mall would be reconfigured as part of Phase I to allow for the proposed expansion.

The overall site would be more welcoming for pedestrians and bicyclists. Condition #12 of Planning Commission Resolution #4014 (Attachment 7) requires pedestrian access between all buildings and connections to the public ways. Condition #13 of Planning Commission Resolution #4014 requires that all walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.

With Phase II, Alternative 1, the roof of the Mall would be opened up to allow the construction of the theater and the creation of a pedestrian courtyard area as well as an outdoor dining area (refer to the drawings at Attachment 6).

Phase II, Alternative 2, would modify the eastern portion of the site by demolishing the existing theater, Michael's, and the vacant retail space adjacent to Big Lots (see site plan at Attachment 5).

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As described in the Parking section above, this alternative would reduce and reconfigure the parking on between the Mall and theater. It would also slightly modify the circulation of the site by providing a drive aisle and compact parking spaces along the south side of the Big Lots building. A pedestrian path is provided between the Mall and the theater.

### Signage

Specific signs have not been proposed with this project. However, in the future, it's likely the applicant would request a modification to the City's Sign Ordinance to allow the existing Merced Mall pylon sign to be modified and updated. Currently, the existing free-standing pylon sign along Olive Avenue does not comply with the City's Sign Ordinance and therefore, could not be modified without being brought into compliance with the sign code regulations. Because the current sign ordinance would not allow a sign with a changeable marquee, the existing sign is not being modified at this time. All other signs on the site would be required to comply with the North Merced Sign Ordinance.

### Environmental Review

The Planning staff has conducted an environmental review (Initial Study #18-02, available on the City's website or at the City Clerk's office; a copy has been provided to City Council) 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 #18-02) is being recommended. A Mitigation Monitoring Program (Exhibit B of Planning Commission Resolution #4014 at Attachment 7) would also be adopted.

### Planning Commission Action

The Planning Commission held a duly noticed public hearing on this matter on January 23, 2019. At the meeting, the project proponent, Bill Kenney spoke in favor of the project. No one spoke in opposition. The Planning Commission unanimously voted to recommend approval of Environmental Review #18-02, including the Mitigation Monitoring Program, and Site Utilization Plan Revision #38 to Planned Development (P-D) #1. Planning Commission Resolution #4014 is provided at Attachment 7 and Planning Commission Staff Report #19-04 is provided at Attachment 8. An excerpt from the minutes of the Planning Commission meeting are provided at Attachment 9.

### City Council Action

The Planning Commission and Planning Staff recommend approval of Environmental Review #18-02, including the adoption of the mitigation monitoring program, and Site Utilization Plan Revision #38 to Planned Development (P-D) #1. In order for the Council to approve these items, a motion should be made to introduce the Ordinance at Attachment 10 and authorize the City Manager or Assistant City Manager to execute the Legislative Action Agreement at Attachment 11.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

**ATTACHMENTS**

1. Location Map
2. Location Map with Parcel Numbers
3. Site Plan - Phase I
4. Site Plan - Phase II, Alternative 1
5. Site Plan - Phase II, Alternative 2
6. Building Elevations - Design Concept
7. Planning Commission Resolution #4014
8. Planning Commission Staff Report #19-04
9. Planning Commission Minutes Excerpt
10. Draft Ordinance
11. Legislative Action Agreement

# Site Utilization Plan Revision #38 to P-D #1 Merced Mall Renovation

Multifamily Residential

LOUGHBOROUGH DR

Retail Commercial

Office Commercial

RST

MST

FAIRFIELD DR

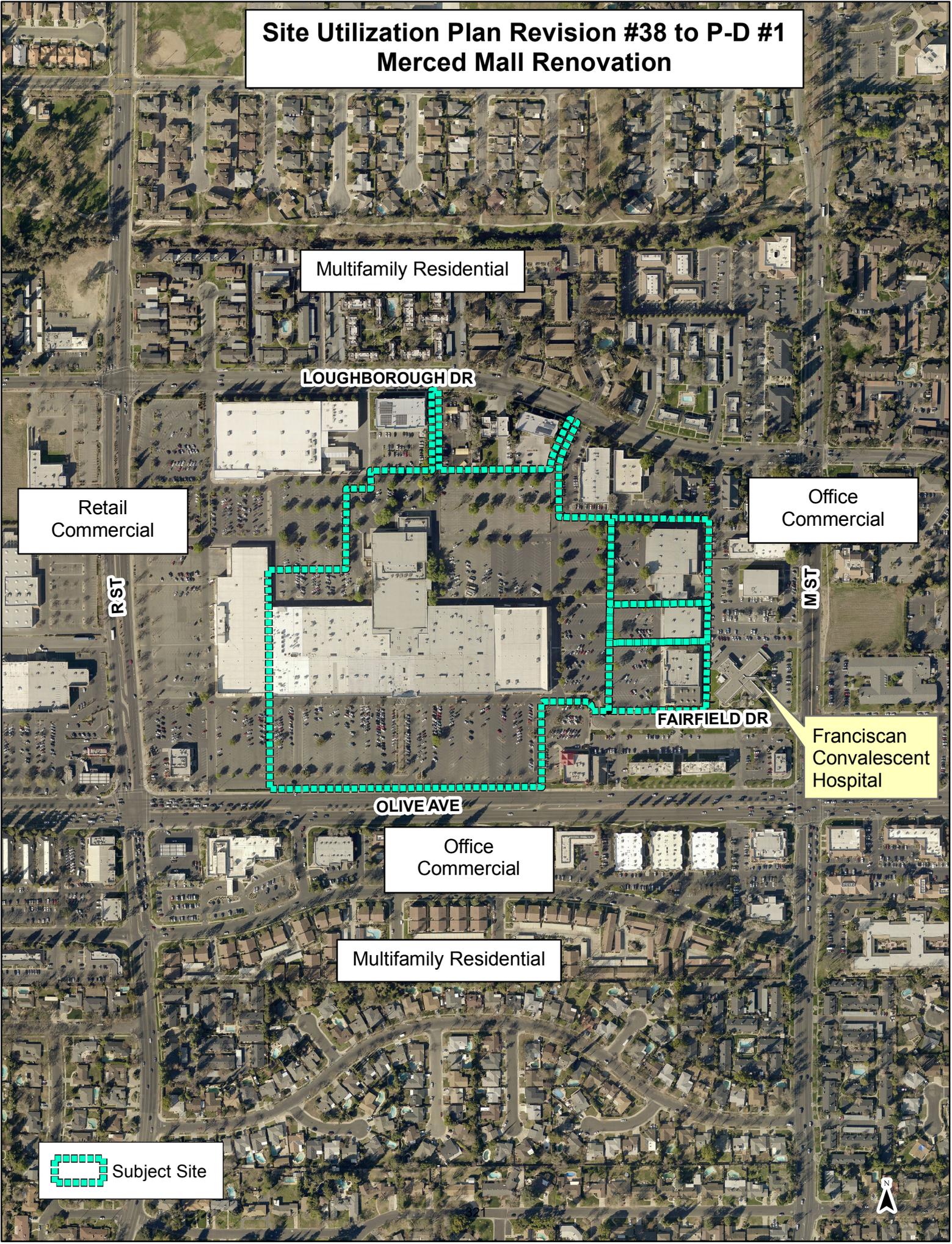
Franciscan Convalescent Hospital

OLIVE AVE

Office Commercial

Multifamily Residential

 Subject Site



# Site Utilization Plan Revision #38 to P-D #1 Merced Mall Renovation - Assessor's Parcel Numbers

LOUGHBOROUGH DR

236-220-014

236-220-015

236-220-038

236-220-016

FAIRFIELD DR

OLIVE AVE

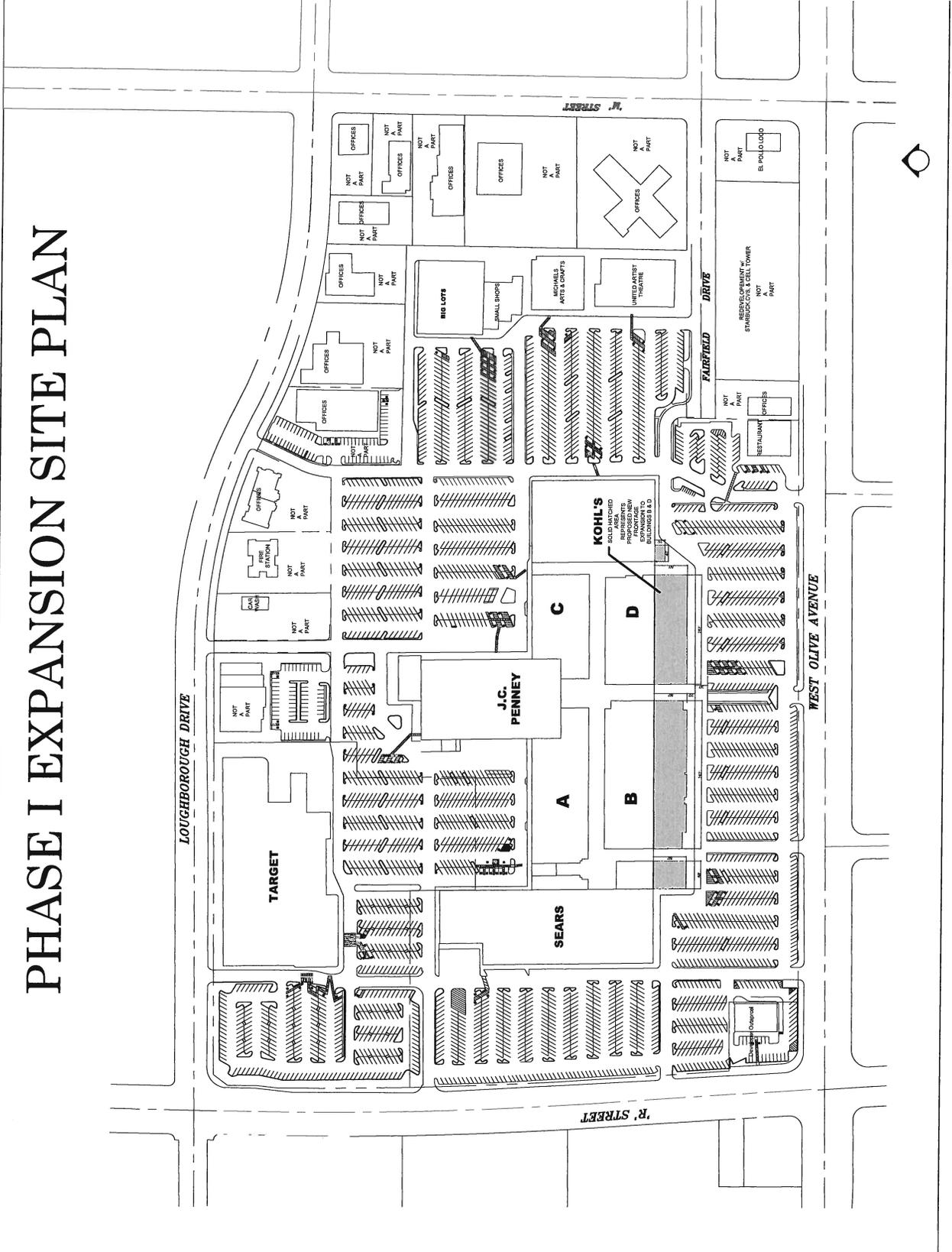


Subject Site



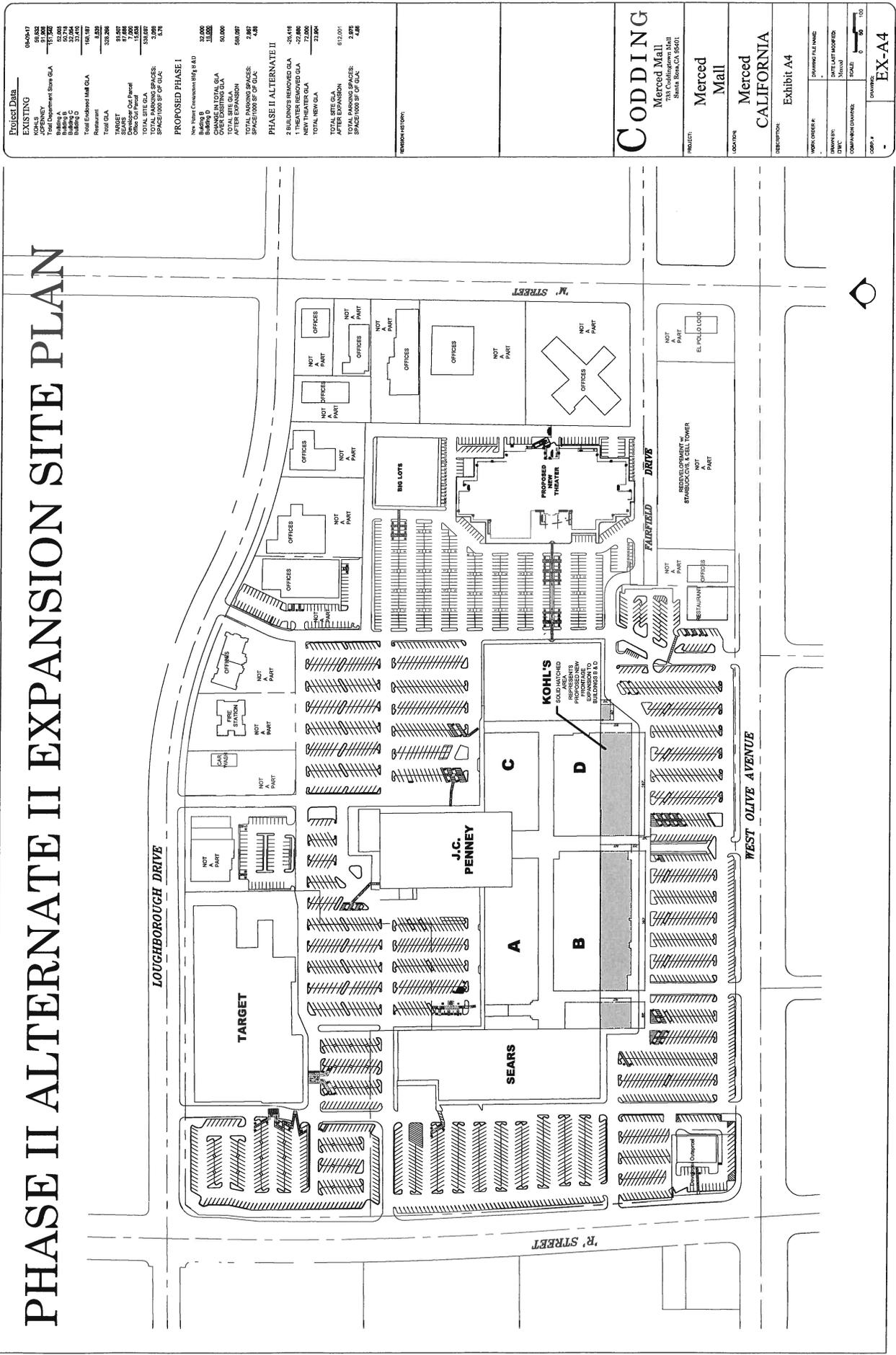
# PHASE I EXPANSION SITE PLAN

<b>Project Data</b>	
<b>EXISTING</b>	06-0417
APPROXIMATE	91,800
Total Department Store G.L.A.	1,071,000
Building A	52,000
Building B	52,000
Building C	32,000
Building D	32,000
Total Enclosed A.M.E. G.L.A.	168,000
Restaurant	8,520
Total G.L.A.	322,280
<b>PROPOSED PHASE I</b>	
MANEET	95,000
Department Store G.L.A.	7,000
Total Parking Spaces:	3,000
Spaces 1000 SF or less	2,000
Spaces 1000 SF or more	1,000
CHANGES IN TOTAL G.L.A.	2,000
CHANGES IN TOTAL A.M.E. G.L.A.	23,520
TOTAL SITE G.L.A.	50,000
AFTER EXPANSION	500,000
PROPOSED PHASE I	2,000
SPACES 1000 SF or less	1,000
SPACES 1000 SF or more	1,000
REVISION HISTORY	
<p><b>CODDING</b> Merced Mall 735 Collingwood Mall Santa Ana, CA 92701</p> <p>PROJECT: Merced Mall LOCATION: Merced CALIFORNIA DESCRIPTION: Exhibit A2</p> <p>OWNER/CLIENT: COLLINGWOOD MALL DATE/LAST MODIFIED: N/A DWG: Merced Mall COMPANION DRAWING: SCALE: 0' = 50' 100' CORP # 1 DRAWING NO. EX-A2</p>	





# PHASE II ALTERNATE II EXPANSION SITE PLAN



**FOOTNOTES**

**EXISTING**

06-0-017	86,000
06-0-018	86,000
06-0-019	86,000
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**REVISION HISTORY**

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**PROJECT INFORMATION**

**CODDING**  
 Merced Mall  
 733 Collingwood Mall  
 Santa Rosa, CA 95601

**PROJECT:** Merced Mall

**LOCATION:** Merced California

**DESCRIPTION:** Exhibit A4

**DATE:** 06/01/17

**DRAWN BY:** DWG

**CHECKED BY:** DWG

**SCALE:** 0' = 1" = 10'

**DATE:** 06/01/17

**PROJECT NO.:** EX-A4



F. Clay Fry Architect, Inc.  
1164 Crescentia Court  
Lafayette, CA 94549  
925-765-2876

CODDING  
MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2018

THEATER SQUARE

A1





F. Clay Fry Architect Inc.  
1164 Crescent Court  
Lafayette, CA 94509  
925-765-2876

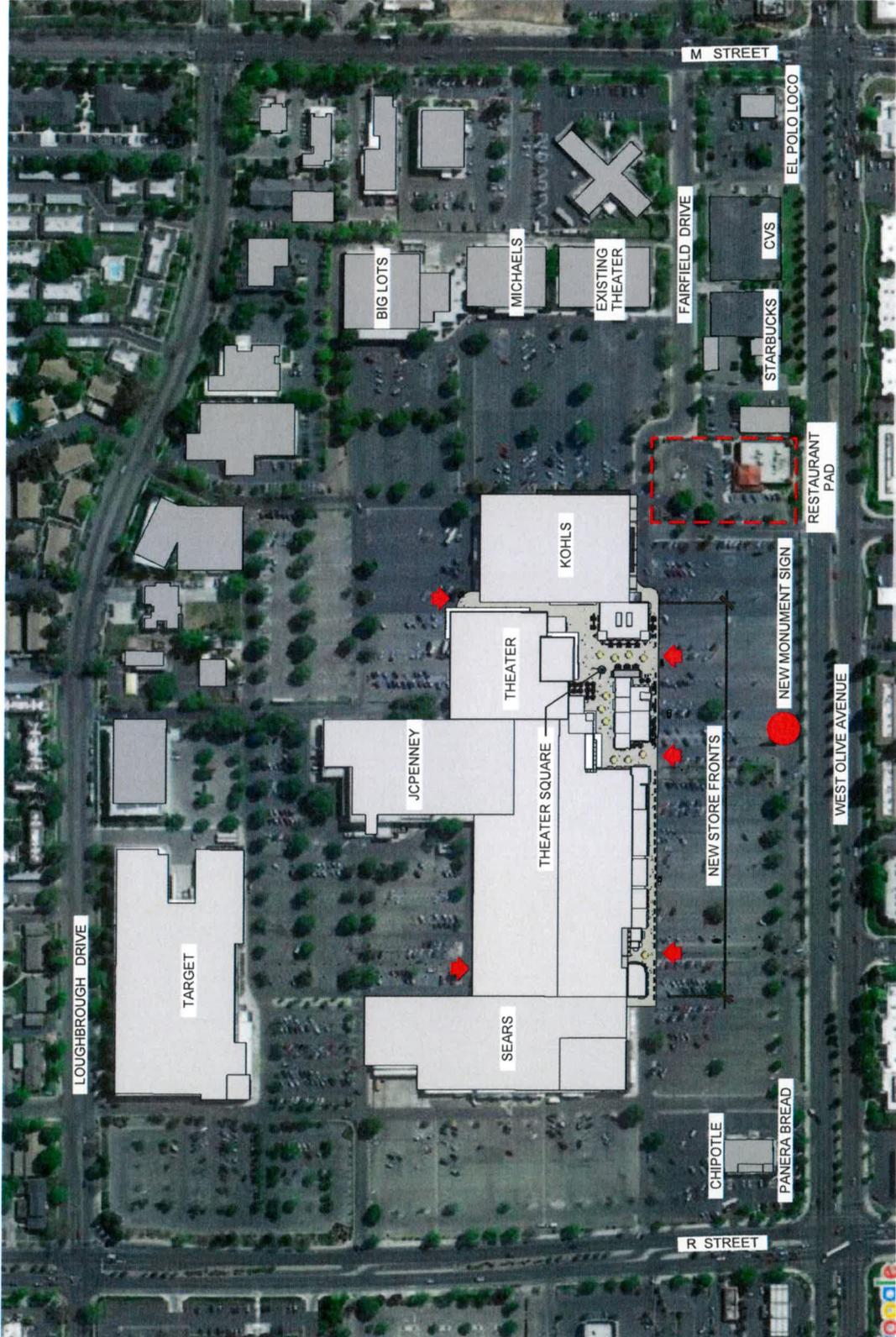
# CODDING

MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2018

SITE PLAN

A2





F. Clay Fry Architects, Inc.  
1164 Crescent Court  
La Jolla, CA 92037  
925-765-2516

# CODDING

MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2018

PERSPECTIVES

A3





F. Clay Fry Architect Inc.  
1164 Crescentia Court  
Lafayette, CA 94509  
925-165-2816

# CODDING MERCED MALL MERCED, CALIFORNIA

MARCH 23, 2018

PERSPECTIVES

A4





F. Clay Fry Architect, Inc.  
1164 Crescentia Court  
Lafayette, CA 94549  
925-765-2876

# CODDING

MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2018

PERSPECTIVES

A5



F. Clay Fry Architect, Inc.  
1154 Crater Circle  
Lafayette, CA 94509  
925-662-2016

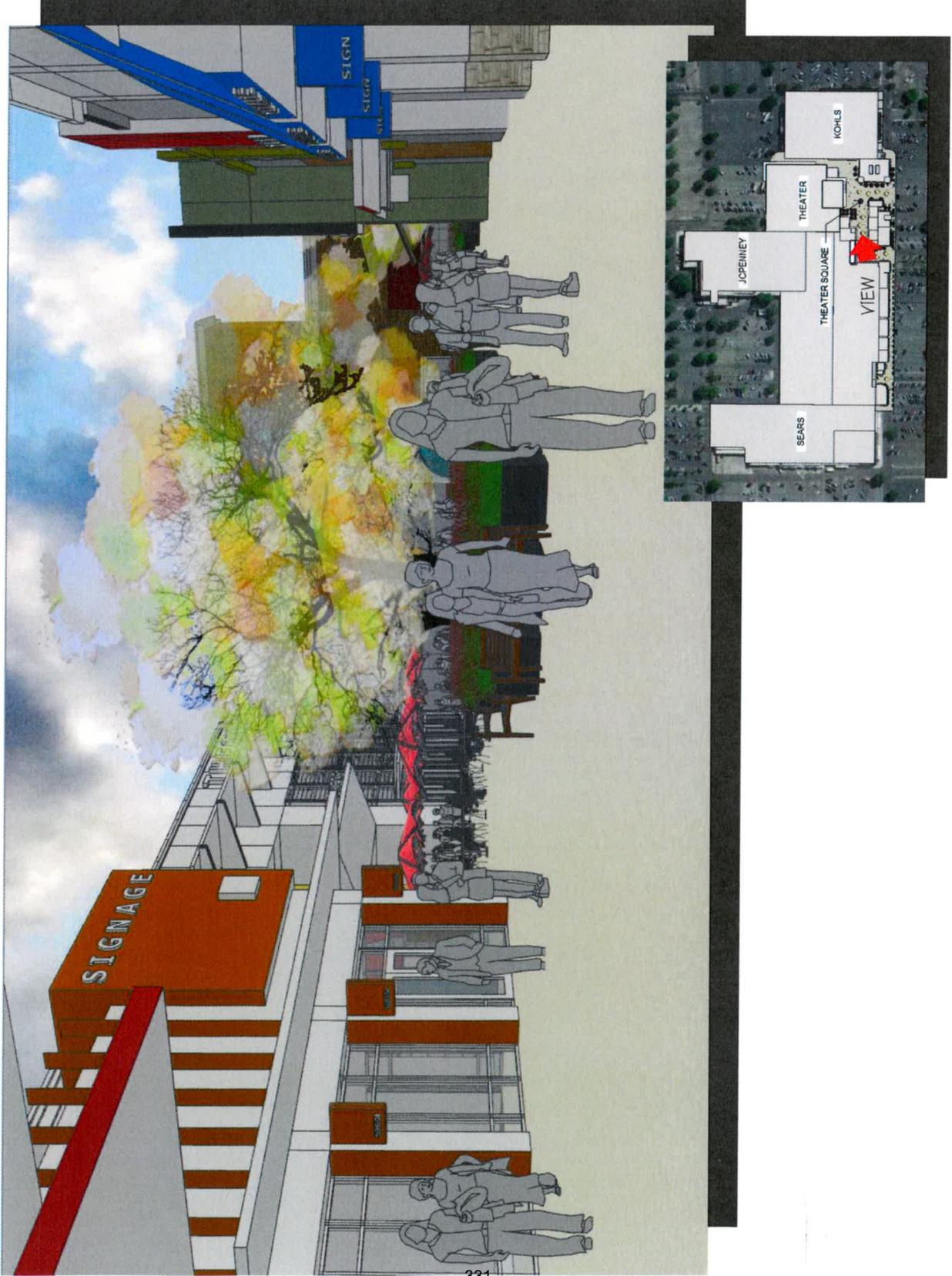
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MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2016

PERSPECTIVES

A6





F. Clay Fry Architect, Inc.  
1164 Crescentia Court  
Lafayette, CA 94549  
925-765-2876

# CODDING

MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2018

PERSPECTIVES

A7





Stacy Fry Architect Inc.  
 1544 Robinson Court  
 Lafayette, CA 94549  
 925-785-2576

CODDING  
 MERCED MALL  
 MERCED, CALIFORNIA

MARCH 23, 2016

PERSPECTIVES

A8



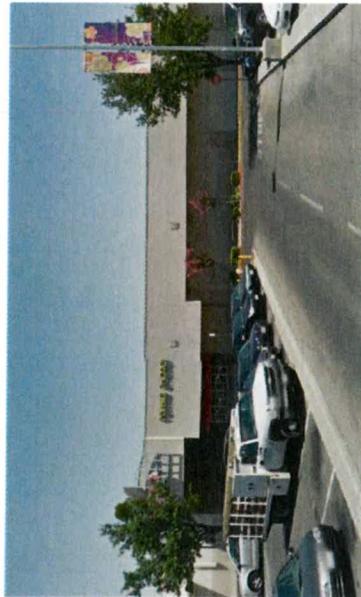
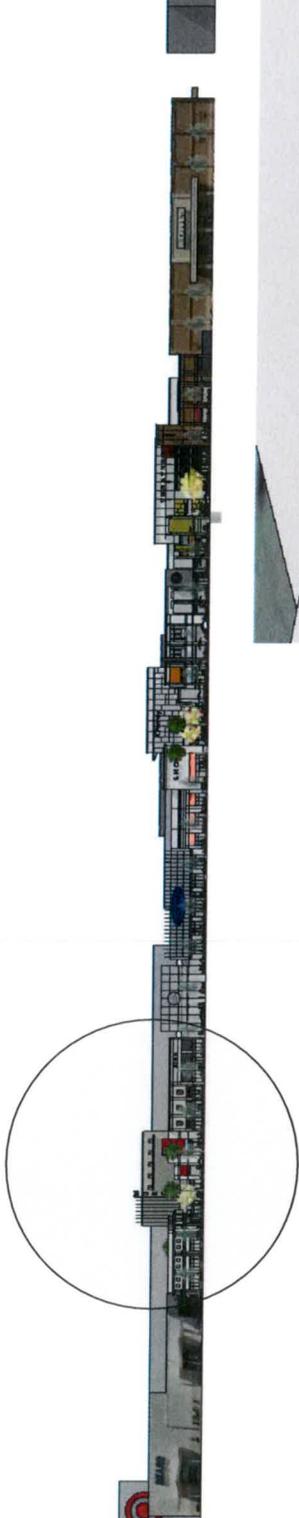
F. Clay Fry Architect Inc.  
1164 Crescent Court  
Lafayette, CA 94549  
925-765-2876

# CODDING MERCED MALL MERCED, CALIFORNIA

MARCH 23, 2018

MERCED MARQUE

A9





F. Clay Fry Architect, Inc.  
1654 Creechmead Court  
Livermore, CA 94551  
925-952-2216

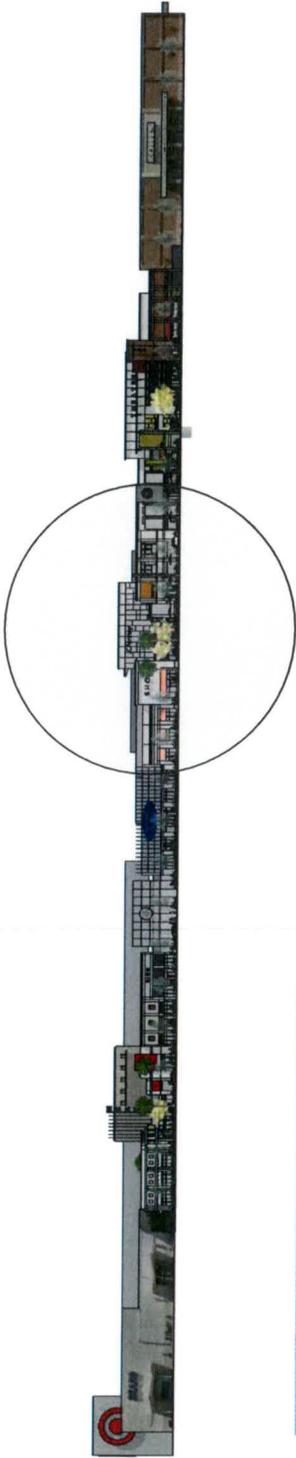
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MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2018

JCPENNEY MARQUE

A10





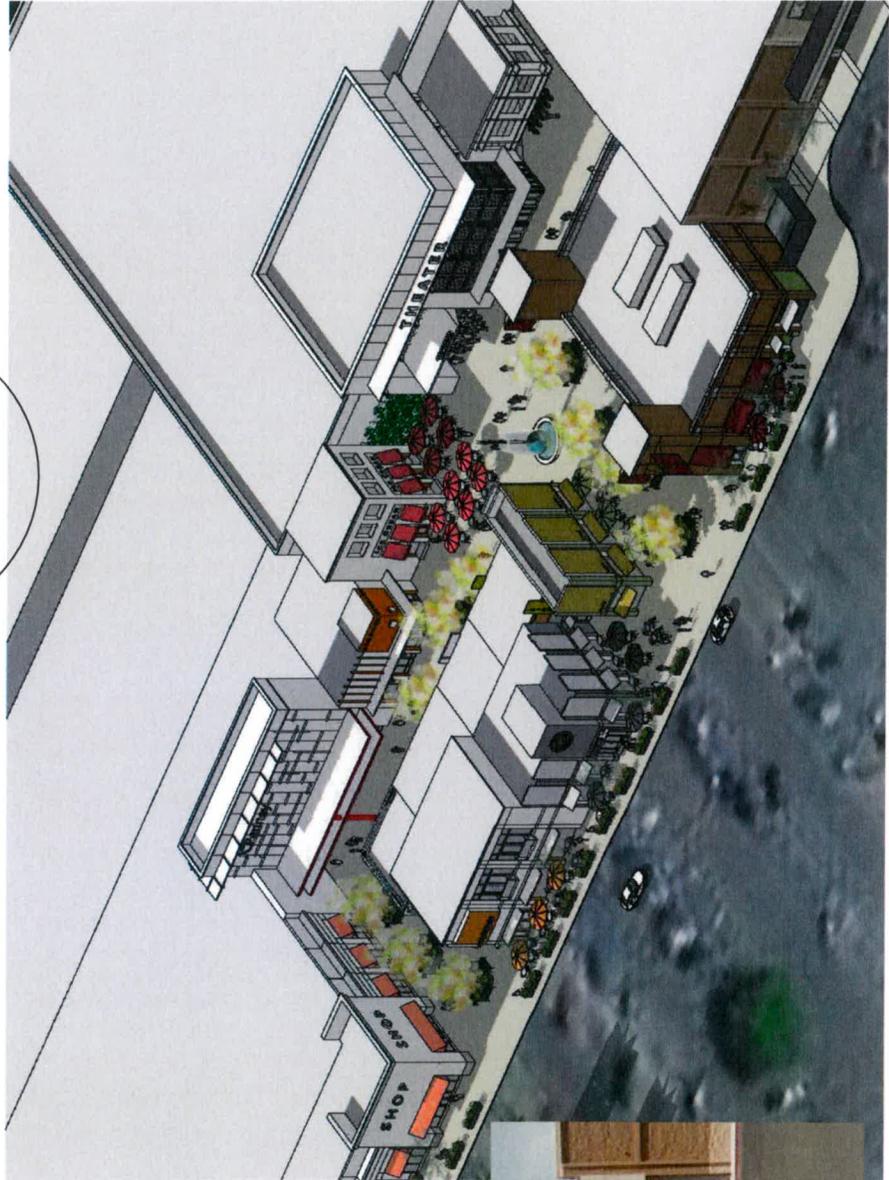
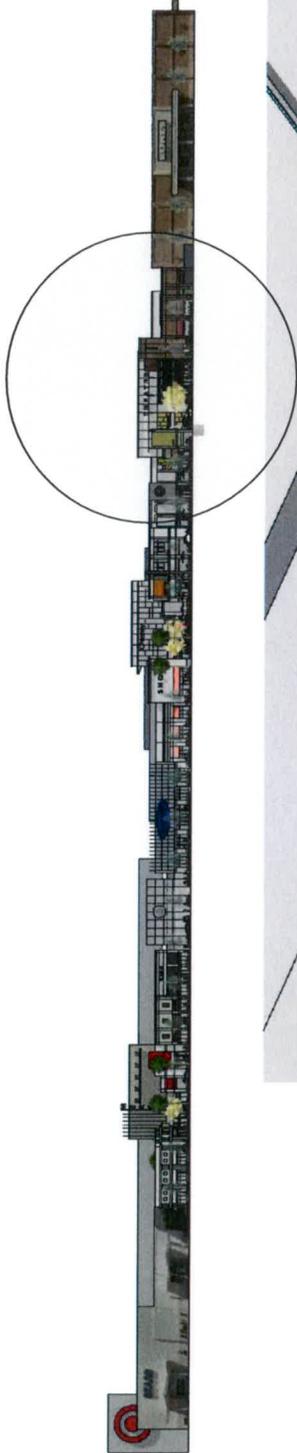
F. Clay Fry Architect, Inc.  
11504 Oranville Court  
Lafayette, CA 94549  
925-765-2876

CODDING  
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MERCED, CALIFORNIA

MARCH 23, 2018

THEATER SQUARE

A11





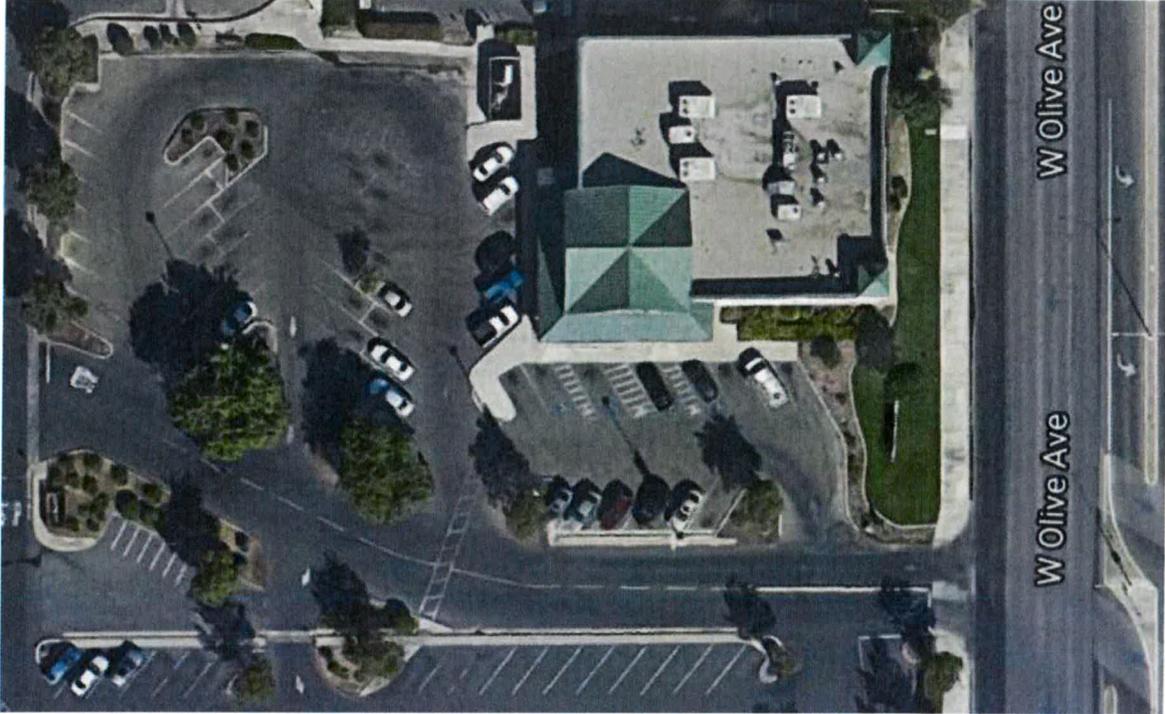
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1164 Crescenta Court  
Lafayette, CA 94549  
925-765-2816

CODDING  
MERCED MALL  
MERCED, CALIFORNIA

MARCH 23, 2018

RESTAURANT PAD

A12



**CITY OF MERCED  
Planning Commission**

**Resolution #4014**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **Site Utilization Plan Revision #38 to Planned Development #1**, initiated by Merced Mall LTD, property owners. This application is a request to allow the renovation and expansion of the Merced Mall located at 851 W. Olive Avenue. The Project would increase the leasable retail area of the Merced Mall and construct a new movie theater at one of two possible locations within the project site. The project site consists of approximately 52 acres and is generally located on the north side of Olive Avenue between M and R Streets. The site has a General Plan designation of Regional/Community Commercial (RC) and is zoned Planned Development (P-D) #1; also known as Assessor's Parcel No. 236-220-038; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through J of Staff Report #19-04; and,

**WHEREAS**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully 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 B) regarding Initial Study #18-02, and approval of Site Utilization Plan Revision #38 to Planned Development (P-D) #1, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner CAMPER, seconded by Commissioner PADILLA, and carried by the following vote:

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe and Chairperson Dylina

NOES: None

ABSENT: None

ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 4014

Page 2

January 23, 2019

Adopted this 23<sup>rd</sup> day of January 2019



\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

n:\shared\planning\PC Resolutions\SUP Rev #38 to PD #1 (Merced Mall Expansion)

**Conditions of Approval**  
**Planning Commission Resolution #4014**  
**Site Utilization Plan #38 to Planned Development (PD) #1**

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan for Phase I (Attachment C of Planning Commission Staff Report #19-04), the Site Plan for either Phase II, Alternative 1, or Phase II, Alternative 2 (Attachments D and E of Planning Commission Staff Report #19-04), and the conceptual elevations found at Attachment F of Planning Commission Staff Report #19-04, except as modified by the conditions or as approved by the Site Plan Review Committee.
2. The following conditions apply to the new renovation areas of the Merced Mall and not to existing development that won't be modified under this renovation. Details to be worked out with Planning Staff.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with all applicable conditions previously approved for this site
5. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
6. Approval of the Site Utilization Plan Revision is subject to the applicant's entering into a written (legislative action) 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. 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 (with counsel selected by the City), 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
8. 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.
9. The project shall comply with all mitigation measures required by the mitigation monitoring program for Initial Study #18-02 (Exhibit B of Draft Planning Commission Resolution at Attachment H of Staff Report #19-04).

10. In compliance with Merced Municipal Code Section 20.20.020 Q, Site Plan Review approval is required prior to development to address conformance with the standards of Planned Development (P-D) #1.
11. Umbrellas, fencing, or other outdoor features used for the outdoor seating areas shall not include advertising for any specific business or brand and shall be uniform in color to complement the buildings.
12. The site shall be provided with pedestrian access between the buildings and connection to public ways (i.e., public sidewalks, streets, etc.).
13. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment. Pedestrian access shall be reviewed and approved by the Site Plan Review Committee prior to a building permit being issued.
14. All mechanical equipment shall be screened from public view.
15. 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's Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks.
16. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access shall be provided for all reconfigured parking areas. .
17. If changes are made to the site that would affect the current system used by the UC Merced Cat Tracks System and the Merced Transit System (The Bus), the developer shall work with UC Merced (Cat Tracks) and the Merced Transit System (The Bus) to determine the best location for public transit facilities. If relocated, the location of these facilities will be subject to review and approval by the Site Plan Review Committee.
18. Any driveways that are modified, added, or relocated shall comply with the City of Merced Design Standards for commercial driveways and are to be reviewed by the Fire Department as part of the review of the improvement plan submittals.

19. Any missing improvements along the project frontage shall be installed to meet City Standards. Any existing improvements that have been damaged or otherwise do not meet current City Standards shall be repaired or replaced to meet City Standards. This includes, but is not limited to, sidewalk, curb, gutter, street trees, and street lights.
20. Bicycle parking shall meet the minimum requirements of the California Green Building Code and MMC 20.38.080.
21. The project shall comply with the Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
22. All storm water shall be retained onsite and metered out to the City's storm water system in accordance with City Standards. The City Engineer shall approval final design of the storm drain system prior to construction.
23. All new utilities (including electrical lines) shall be installed underground.
24. A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire).
25. All landscaping shall comply with the Section 20.36.040 – Landscape and Sprinkler Plans, of the City's Zoning Ordinance in addition to all applicable state laws.
26. Full landscape and irrigation plans shall be submitted at the time of building permit application.
27. 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 parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
28. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards for any new or modified parking areas. 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). Trees shall be installed at a ratio of at least one tree for each six parking spaces. The trees may be located in planter areas that protrude into the parking areas, or which run along

the edge of the parking areas and shall be located to accommodate any carport or shade structures. Details regarding the above to be worked out with Planning Staff and/or approved by the Site Plan Review committee.).

29. When possible, mature existing trees should remain or be relocated on the site. Details to be worked out with Planning Staff.
30. As depicted in the elevations provided, landscape planters shall be placed throughout the courtyard area and along the sidewalk area. However, the planters shall not block access to the site, stores, or other facilities. All planters shall provide the necessary clearance to meet handicap accessibility requirements.
31. All landscaping on the site shall be maintained in a healthy and aesthetically pleasing manner.
32. Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District.
33. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
34. Construction activity shall only take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless otherwise approved by the Chief Building Official.
35. The project shall comply with all FEMA Flood Zone requirements and with the California 200-year Urban Level of Flood Protection requirements.
36. The premises shall remain clean and free of debris, weeds, and graffiti at all times.
37. All signs shall comply with the requirements of the North Merced Sign Ordinance. No free-standing A-Frame or sandwich board-type signs shall be allowed. All other moveable temporary signs are prohibited as well. Temporary banners may be installed on a building wall in compliance with the City's Sign Ordinance and after obtaining a Temporary Banner Permit from the Planning Department. A building permit shall be obtained for all permanent signs.
38. All businesses selling and/or serving alcoholic beverages shall comply with all regulations of the California Alcoholic Beverage

Control and the City of Merced. Any future bar, nightclub, cocktail lounge, or similar use would require a Conditional Use Permit. Any business less than 20,000 square feet in size selling alcoholic beverages for off-site consumption would also require a Conditional Use Permit.

n:shared:planning:PC Resolutions:SUP Rev#38 to PD #1 (Merced mall Expansion) Exhibit A

## **MITIGATION MONITORING AND REPORTING PROGRAM**

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Merced Mall Expansion Project (project). The MMRP, which is provided in Table A, lists mitigation measures recommended in the IS/MND for the project and identifies mitigation monitoring requirements. The MMRP must be adopted when the City Council makes a final decision on the project.

### **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**

As stated above, 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” ordinance (Merced Municipal Code [MMC] 19.28). The City’s program was developed in accordance with the advisory publication, Tracking CEQA Mitigation Measures Under AB 3180, from the Governor’s Office of Planning and Research.<sup>1</sup>

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

- 1) The requirements of the adopted mitigation monitoring program for the Merced Mall Expansion Project 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 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

<sup>1</sup> Governor's Office of Planning and Research. 1994. Tracking CEQA Mitigation Measures Under AB 3180. Sacramento, California.

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. Development Services 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.

### **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 initiate an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall require 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. 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 for the project. The columns within the tables are defined as follows:

Impact Statement:	Describes the potential impact that could result from implementation of the proposed project.
Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Monitoring Responsibility:	This column references any City department or public agency with which coordination is required to satisfy the identified mitigation measure.
Monitoring Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p><b>INITIAL STUDY IMPACTS AND MITIGATION MEASURES</b></p> <p><b>4.3 AIR QUALITY</b></p> <p>The project could violate air quality standards during the construction period.</p>	<p><b>AIR-1:</b> Consistent with SJVAPCD Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions), the following controls are required to be included as specifications for the proposed project and implemented at the construction site:</p> <ul style="list-style-type: none"> <li>● 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.</li> <li>● All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.</li> <li>● 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.</li> <li>● 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.</li> <li>● All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (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.)</li> <li>● 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.</li> </ul>	<p>Development Services, Building Division</p>	<p>Contractors shall be responsible for including in contract specifications prior to issuance building permit and measures are implemented throughout duration of construction activities.</p>	
<p><b>4.4 BIOLOGICAL RESOURCES</b></p> <p>The project would result in the removal of trees that could adversely affect nesting</p>	<p><b>BIO-1:</b> The following measures shall be implemented to reduce potential impacts to nesting birds:</p>	<p>Development Services, Building</p>	<p>The applicant and contractors shall be</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
birds.	<ul style="list-style-type: none"> <li>If tree removal will occur during the nesting season (February 1 to August 31), a qualified biologist shall survey all suitable nesting habitat in the BSA for presence of nesting birds. This survey shall occur no more than 10 days prior to the start of construction. If no nesting activity is observed, work may proceed as planned. If an active nest is discovered, a qualified biologist shall evaluate the potential for the proposed project to disturb nesting activities. The evaluation criteria shall include, but are not limited to, the location/orientation of the nest in the nest tree, the distance of the nest from the BSA, and line of sight between the nest and the BSA.</li> <li>California Department of Fish and Wildlife (CDFW) shall be contacted to review the evaluation and determine if the project can proceed without adversely affecting nesting activity.</li> <li>If work is allowed to proceed after nesting activity has been observed, a qualified biologist shall be on-site daily during construction activities to monitor nesting activity. The biologist shall have the authority to stop work if it is determined the project is adversely affecting nesting activities.</li> </ul>	Division	responsible for implementing the measures throughout duration of construction activities.	
<p><b>4.5 CULTURAL RESOURCES</b></p> <p>Construction of the project could adversely affect unknown historic resources.</p>	<p>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.</p> <p>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</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p>Construction of the project could adversely affect unknown archaeological resources.</p>	<p>implementation. These additional studies may include, but are not limited to recordation, archaeological excavation, or other forms of significance evaluations.</p> <p>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:</p> <p>“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; flakes of, 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.”</p> <p>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.</p> <p>CUL-2: Implement Mitigation Measure CUL-1.</p>	<p>Development Services, Building Division</p>	<p>The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p>Construction of the project could disturb unknown human remains.</p>	<p>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.</p>	<p>Development Services, Building Division</p>	<p>The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.</p>	
<p><b>4.7 GREENHOUSE GAS EMISSIONS</b></p>				
<p>The project would directly or indirectly generate greenhouse gas emissions.</p>	<p>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:</p> <ul style="list-style-type: none"> <li>● The project applicant shall provide a pedestrian access network that internally links all uses and connects to existing external streets and pedestrian facilities.</li> <li>● 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.</li> <li>● 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, roundabouts, and speed humps.</li> </ul>	<p>Development Services, Planning Division</p>	<p>The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p><b>4.9 HYDROLOGY AND WATER QUALITY</b></p> <p>The project could result in short-term construction-related water quality impacts.</p>	<ul style="list-style-type: none"> <li>The project shall provide for car sharing programs. Accommodations for such programs could include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.</li> <li>The project applicant shall plant trees to provide shade.</li> <li>The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.</li> </ul> <p>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.</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	
<p>The project could result in stormwater pollution.</p>	<p>HYDRO-2: To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. 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.</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.	
<p><b>4.12 NOISE</b></p> <p>Construction could result in a temporary or periodic increase in ambient noise levels in the project vicinity.</p>	<p>NOI-1: The project contractor shall implement the following measures during construction of the project:</p> <ul style="list-style-type: none"> <li>Equip all construction equipment, fixed or mobile, with</li> </ul>		The applicant and contractors shall be responsible for	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
	<p>properly operating and maintained mufflers consistent with manufacturers' standards.</p> <ul style="list-style-type: none"> <li>● Ensure that all general construction related activities are restricted to between the hours of 7:00 a.m. and 6:00 p.m. to avoid noise-sensitive hours of the day.</li> <li>● Designate a "disturbance coordinator" at the City who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler) and would determine and implement reasonable measures warranted to correct the problem.</li> </ul>		implementing the measures throughout duration of construction activities.	

Source: LSA (2019).

**CITY OF MERCED**  
**Planning & Permitting Division**

**STAFF REPORT:** #19-04

**AGENDA ITEM:** 4.2

**FROM:** Kim Espinosa,  
Planning Manager

**PLANNING COMMISSION**  
**MEETING DATE: Jan. 23, 2019**

**PREPARED BY:** Julie Nelson,  
Associate Planner

**CITY COUNCIL**  
**MEETING DATE: March 4, 2019**  
**(Tentative)**

**SUBJECT:** **Site Utilization Plan Revision #38 to Planned Development (P-D) #1**, initiated by Merced Mall LTD, property owners. This application is a request to allow the renovation and expansion of the Merced Mall located at 851 W. Olive Avenue. The Project would increase the leasable retail area of the Merced Mall and construct a new movie theater at one of two possible locations within the project site. The project site consists of approximately 52 acres and is generally located on the north side of Olive Avenue between M and R Streets. The site has a General Plan designation of Regional/Community Commercial (RC) and is zoned Planned Development (P-D) #1. \*PUBLIC HEARING\*

**ACTION:** PLANNING COMMISSION:

Recommendation to City Council

- 1) Environmental Review #18-02 (Draft Mitigated Negative Declaration, including the Mitigation Monitoring Program)
- 2) Site Utilization Plan Revision #38 to Planned Development (P-D) #1

CITY COUNCIL:

Approve/Disapprove/Modify

- 1) Environmental Review #18-02 (Draft Mitigated Negative Declaration including the Mitigation Monitoring Program)
- 2) Site Utilization Plan Revision #38 to Planned Development (P-D) #1

**SUMMARY**

The proposed project would renovate the Merced Mall located at 851 West Olive Avenue (Attachment A) adding additional floor space in two phases. The renovation would include the parcel where the Mall is located (APN: 236-220-038) and the parcels where the United Artists Theater and Michael's is located as well as the Mall retail space adjacent to Big Lots (APN's: 236-220-016; -015; -014) (refer to the map at Attachment B). It should be noted that this project does not include the Sears building. The property where Sears is located is owned by a different entity and is not part of this project.

Phase I of the project would expand the existing building along the southern elevation, adding approximately 50,000 square feet of building area (Attachment C). Along with the building expansion, the southern parking lot along Olive Avenue would be reconfigured.

The project applicant has proposed two alternatives for construction of a new movie theater as part of Phase II. The project applicant would determine at a later date which alternative will be constructed. Details for both alternatives have been provided.

Phase II, Alternative 1 would relocate the existing theater from its existing location east of the Mall to the existing Mall building. The theater would be constructed at-grade between JC Penny and Kohl's. This would create a pedestrian Mall and open courtyard in front of the theater area (Attachment D). The theater would be approximately 72,000 square feet and have up to 3,000 seats.

Phase II, Alternative 2 would demolish the existing United Artists Theater and two retail stores located along the eastern boundary of the project site, and would construct a 72,000-square-foot at-grade theater at that location (Attachment E)

City staff has reviewed the project, including both Phase II alternatives, and is recommending the Planning Commission recommend approval of the Site Utilization Plan Revision to the City Council. Once the applicant has determined which alternative would be constructed, a Site Plan Review application would be required to finalize the project details (Condition #10). Please note that the elevations provided are conceptual and draft in nature. The final plans approved by the Site Plan Review Committee may vary from what is included herein.

### **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend approval of 1) A Mitigated Negative Declaration (Environmental Review #18-02) including the Mitigation Monitoring Program; and 2) Site Utilization Plan Revision #38 to Planned Development (P-D) #1 (including the adoption of the Resolution at Attachment H) subject to the following conditions:

- \*1) The proposed project shall be constructed/designed in substantial compliance with the Site Plan for Phase I (Attachment C of Planning Commission Staff Report #19-04), the Site Plan for either Phase II, Alternative 1, or Phase II, Alternative 2 (Attachments D and E of Planning Commission Staff Report #19-04), and the conceptual elevations found at Attachment F of Planning Commission Staff Report #19-04, except as modified by the conditions or as approved by the Site Plan Review Committee.
- 2) The following conditions apply to the new renovation areas of the Merced Mall and not to existing development that won't be modified under this renovation. Details to be worked out with Planning Staff.
- \*3) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- \*4) The Project shall comply with all applicable conditions previously approved for this site
- \*5) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.

- \*6) Approval of the Site Utilization Plan Revision is subject to the applicant's entering into a written (legislative action) 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) 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 (with counsel selected by the City), 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- \*8) 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.
- \*9) The project shall comply with all mitigation measures required by the mitigation monitoring program for Initial Study #18-02 (Exhibit B of Draft Planning Commission Resolution at Attachment H).

#### **Site Design/Building Design**

- \*10) In compliance with Merced Municipal Code Section 20.20.020 Q, Site Plan Review approval is required prior to development to address conformance with the standards of Planned Development (P-D) #1.

- 11) Umbrellas, fencing, or other outdoor features used for the outdoor seating areas shall not include advertising for any specific business or brand and shall be uniform in color to complement the buildings.
- 12) The site shall be provided with pedestrian access between the buildings and connection to public ways (i.e., public sidewalks, streets, etc.).
- 13) All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment. Pedestrian access shall be reviewed and approved by the Site Plan Review Committee prior to a building permit being issued.
- 14) All mechanical equipment shall be screened from public view.
- 15) 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's Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks.
- 16) A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access shall be provided for all reconfigured parking areas. .
- 17) If changes are made to the site that would affect the current system used by the UC Merced Cat Tracks System and the Merced Transit System (The Bus), the developer shall work with UC Merced (Cat Tracks) and the Merced Transit System (The Bus) to determine the best location for public transit facilities. If relocated, the location of these facilities will be subject to review and approval by the Site Plan Review Committee.

#### **Public Improvements/Infrastructure**

- 18) Any driveways that are modified, added, or relocated shall comply with the City of Merced Design Standards for commercial driveways and are to be reviewed by the Fire Department as part of the review of the improvement plan submittals.
- 19) Any missing improvements along the project frontage shall be installed to meet City Standards. Any existing improvements that have been damaged or otherwise do not meet current City Standards shall be repaired or replaced to meet City Standards. This includes, but is not limited to, sidewalk, curb, gutter, street trees, and street lights.
- 20) Bicycle parking shall meet the minimum requirements of the California Green Building Code and MMC 20.38.080.
- 21) The project shall comply with the Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- 22) All storm water shall be retained onsite and metered out to the City's storm water system in accordance with City Standards. The City Engineer shall approval final design of the storm drain system prior to construction.
- 23) All new utilities (including electrical lines) shall be installed underground.

- 24) A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire).

### **Landscaping**

- 25) All landscaping shall comply with the Section 20.36.040 – Landscape and Sprinkler Plans, of the City’s Zoning Ordinance in addition to all applicable state laws.
- 26) Full landscape and irrigation plans shall be submitted at the time of building permit application.
- 27) 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 parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
- 28) Parking lot trees shall be installed per the City’s Parking Lot Landscape Standards for any new or modified parking areas. 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). Trees shall be installed at a ratio of at least one tree for each six parking spaces. The trees may be located in planter areas that protrude into the parking areas, or which run along the edge of the parking areas and shall be located to accommodate any carport or shade structures. Details regarding the above to be worked out with Planning Staff and/or approved by the Site Plan Review committee.).
- 29) When possible, mature existing trees should remain or be relocated on the site. Details to be worked out with Planning Staff.
- 30) As depicted in the elevations provided, landscape planters shall be placed throughout the courtyard area and along the sidewalk area. However, the planters shall not block access to the site, stores, or other facilities. All planters shall provide the necessary clearance to meet handicap accessibility requirements.
- 31) All landscaping on the site shall be maintained in a healthy and aesthetically pleasing manner.

### **General Construction**

- 32) Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District.
- 33) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- 34) Construction activity shall only take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless otherwise approved by the Chief Building Official.
- 35) The project shall comply with all FEMA Flood Zone requirements and with the California 200-year Urban Level of Flood Protection requirements.

### **Other General**

- 36) The premises shall remain clean and free of debris, weeds, and graffiti at all times.
- 37) All signs shall comply with the requirements of the North Merced Sign Ordinance. No free-standing A-Frame or sandwich board-type signs shall be allowed. All other moveable temporary signs are prohibited as well. Temporary banners may be installed on a building wall in compliance with the City's Sign Ordinance and after obtaining a Temporary Banner Permit from the Planning Department. A building permit shall be obtained for all permanent signs.
- 38) All businesses selling and/or serving alcoholic beverages shall comply with all regulations of the California Alcoholic Beverage Control and the City of Merced. Any future bar, nightclub, cocktail lounge, or similar use would require a Conditional Use Permit. Any business less than 20,000 square feet in size selling alcoholic beverages for off-site consumption would also require a Conditional Use Permit.

(\* ) Denotes non-discretionary conditions.

### **PROJECT DESCRIPTION**

The project site is the Merced Mall located at 851 West Olive Avenue (Attachment A). The proposed project would increase the leasable retail area of the Mall and would be constructed in two phases, with Phase II having two options for the current movie theater. A description of each phase as well as the two Alternatives proposed for Phase II are provided below.

#### *Phase I*

Phase I of the proposed project would expand the buildings located along the southern elevation of the shopping center south towards West Olive Avenue by an additional 80 feet (Attachment C). The new frontage would be constructed in an updated and contemporary design. The height of the new frontage would increase the building mass and would be approximately 50 feet. This would increase the gross leasable area (GLA) of the project site by approximately 50,000 square feet, for a total GLA of 588,097 square feet. The southern parking lot would be reconfigured, repaved, restriped, and re-landscaped. The total parking within the project site under Phase I would decrease by 232 parking spaces for a total of 2,867 parking spaces.

#### *Phase II*

Phase II of the proposed project would include construction of a 72,000-square-foot movie theater containing up to 3,000 seats. The project applicant has proposed two alternatives under Phase II which would result in the location of a new movie theater at one of two locations within the project site.

#### *Phase II, Alternative 1*

Phase II, Alternative 1 would add an at-grade 72,000-square-foot theater between the existing JC Penny and Kohl's stores in the main shopping center building (Attachment D). In addition, this Phase would remove the enclosed Mall roof between JC Penney and Kohl's, and result in a pedestrian Mall and open courtyard in front of the new theater. The design and height of the movie theater addition would be integrated into the existing shopping center building and would be

consistent with the exterior additions completed under Phase I. The height of the movie theater would be approximately 50 feet in height. The existing United Artists movie theater would be demolished and replaced with a new retail building of similar size. The total GLA of the project site after Phase I and Phase II, Alternative 1 would be approximately 660,097 square feet. The total number of parking spaces within the project site following completion of Phase I and Phase II, Alternative 1 would decrease by 232 parking spaces for a total of 2,810 parking spaces.

*Phase II, Alternative 2*

Phase II, Alternative 2 would demolish the existing United Artists Theater and two retail stores located along the eastern boundary of the project site, and would construct a 72,000-square-foot at-grade theater at that location (Attachment E). The design and height of the movie theater would be consistent with the exterior additions completed under Phase I, and would be approximately 50 feet in height. The existing theater is approximately 22,680 square feet in size, and the existing retail stores are approximately 25,416 square feet in size. As a result, the total GLA would increase by approximately 23,904 square feet for a total GLA of 612,001 square feet under Phase I and Phase II, Alternative 2. Construction of Phase II, Alternative 2 would include reconfigured parking for the theater. The existing 3,099 parking spaces would decrease by 124 parking spaces under Phase I and Phase II, Alternative 2, resulting in a total of 2,975 parking spaces under Phase II, Alternative 2 buildout.

Surrounding uses are noted at Attachment A

<b>Surrounding Land</b>	<b>Existing Use of Land</b>	<b>City Zoning Designation</b>	<b>City General Plan Land Use Designation</b>
North	Retail/Fire Station/Multi-Family (across Loughborough Drive)	P-D #1	Regional/Community Commercial (RC)/High Medium Density Residential (HMD)
South	Retail/Office (across Olive Avenue)	P-D #15	Commercial Office (CO)/Thoroughfare Commercial (CT)
East	Retail/Office/ Convalescent Home	P-D #1	Commercial Office (CO)
West	Retail	P-D #1	Regional/Community Commercial (RC)

**BACKGROUND**

Planned Development (P-D) #1 was established in 1965. In 1968, the City approved the plans for the Merced Mall and the Mall opened its doors in 1969. The theater was approved in 1969 and opened sometime in the early 1970’s. The building where Michael’s and Big Lots are located were also approved in the early 1970’s and have had various tenants through the years. Through the years, the Mall has undergone some minor upgrades to the interior and exterior, including the addition of a food court in the early 1990’s. The theater has also undergone some minor changes through the years, reconfiguring the theater sizes, adding a theater, and exterior renovations.

## **FINDINGS/CONSIDERATIONS:**

### **General Plan Compliance and Policies Related to This Application**

- A) The proposed project complies with the General Plan designation of Regional/Community Commercial (RC) and the zoning designation of Planned Development (P-D) #1.

The following Land Use Policies and Implementing Actions would be achieved with the approval of this request:

*Policy L-2.3 Promote the Retention and Expansion of Existing Industrial and Commercial Businesses.*

*Policy L-3.2 Encourage Infill Development and a Compact Urban Form.*

*Implementing Action 3.2.b*

*Encourage infill and redevelopment projects within the urban area that could enhance the effectiveness of the transit system.*

- *Encourage projects that increase pedestrian activity and mixed-uses.*

*Policy L-3.3 Promote Site Designs That Encourage Walking, Cycling, and Transit Use*

*Implementing Action 3.3a*

*Encourage project designs which increase the convenience, safety and comfort of people using transit, walking or cycling.*

### **Traffic/Circulation**

- B) The current configuration of vehicle driveways and pedestrian access would not be altered with this project. The project site currently has 11 vehicle ingress/egress driveways providing access to and from West Olive Avenue, R Street, Loughborough Drive, and Fairfield Drive. As noted above, the parking lot facing West Olive Avenue would be reconfigured, repaved, and restriped.

As part of the Environmental Review process for this project, a Traffic Impact Analysis was prepared by LSA Associates, Inc. (refer to Appendix C of the Initial Study at Enclosure 1). Upon completion of Phases I and II of the project, the project is forecast to generate a total of 4,892 daily trips with 47 trips occurring in the a.m. peak hour (7:00 a.m. to 9:00 a.m.) and 367 trips occurring during the p.m. peak hour (4:00 p.m. to 6:00 p.m.). However, for Alternative II, adjustments were made for trips generated by the existing uses. As such, under Phase II, Alternative 2, the project is anticipated to generate 2,431 net daily trips, with 23 trips occurring during the a.m. peak hour and 176 trips occurring during the p.m. peak hour. This traffic analysis looked at 11 intersections and 6 roadway segments adjacent to the project site (refer to the map at Attachment G):

Seven conditions were examined in the Traffic Analysis:

- 1) Existing
- 2) Existing plus project Phase I
- 3) Existing plus project Phases I and II, Alternative 1
- 4) Existing plus project Phases I and II, Alternative 2

- 5) Cumulative
- 6) Cumulative plus project Phases I and II, Alternative 1
- 7) Cumulative plus project Phases I and II, Alternative 2

The traffic analysis looked at the Level of Service for the roadway segments and intersections previously identified. The Level of Service (LOS) rating (Categories A through F, with “A” being the best) identifies the quality of traffic operating conditions. LOS A indicates free-flow traffic conditions with little or no delay. LOS F represents over-saturated conditions where traffic flows exceed capacity resulting in long queues and delays. The City of Merced has adopted LOS D as the standard for streets to operate at an acceptable level.

Based on the analysis of the above road segments, intersections, and project scenarios, the intersection of Mall Driveway 2-Pepperwood Lane/Olive Avenue is forecast to operate at an unsatisfactory Level of Service (LOS) in all scenarios (it currently operates at an LOS F during p.m. peak hours). However, since the major street (Olive Avenue) at this intersection has unimpeded through movements on low delays, the impact at this intersection would not be considered a significant CEQA impact. Therefore, the City does not recommend any mitigation for this intersection. All other study intersections are forecast to operate at a satisfactory LOS in all scenarios and no significant delay is forecast at any of the signalized intersections. Additionally, all roadway segments would operate at an LOS D or better.

### **Parking**

- C) Parking for general retail uses calculated at one space for every 300 square feet of floor area. With Phase I of the project, the parking lot on the south side of the Mall (along Olive Avenue) would be reconfigured, re-striped, and re-landscaped. The total number of parking spaces (3,099) for the Merced Mall and would be reduced by 232 spaces for a total of 2,867. Based on a total Gross Leasable Area (GLA) of 588,097 after the proposed Phase I addition, the total parking required for general retail uses would be 1,960 spaces.

Parking for theaters is based on the number of seats (if fixed seats are provided). The parking ratio based on fixed seats is 1 space for every 4 seats. The new theater under both alternatives would provide up to 3,000 fixed seats. This would create the need for an additional 750 spaces above the 1,960 spaces required for the general retail uses. Therefore, a total of 2,710 spaces would be required at the completion of Phase II, Alternatives 1 or 2. With the construction of Phase II, Alternative 1 (adding the 70,000-square-foot theater to the Mall building), the total GLA would be increased to 660,097 square feet, creating a need for 2,200 parking spaces. The total number of parking spaces provided after construction of Phase I and Phase II, Alternative 1, would be 2,810 spaces.

Construction of Phase II, Alternative 2 (demolishing the existing theater and two retail buildings and building a new 70,000-square-foot theater) would also include reconfiguring the parking on the theater parcel (Attachment E). The parking requirements under both alternatives would be the same: 2,810 spaces. With the completion of Phase II, Alternative 2, the site would provide 2,975 spaces.

The site provides adequate parking under all the above scenarios and provides enough additional parking to allow a cushion for uses that may have a higher parking requirement than standard retail commercial. For example, restaurants are required to provide 1 space for each 100 square feet of floor seating area or 1 space for each 2.5 seats, whichever is greater. Personal services such as salons are required to provide 1 space for every 250 square feet of floor area or 1 per employee whichever is greater.

### **Public Improvements/City Services**

- D) All the roads and major infrastructure needed to serve the site are existing. However, any damaged public improvements such as sidewalk, curb, gutters, street trees, etc. along the project frontage would have to be replaced. The need for repairs or replacement of infrastructure would be determined at the building permit stage.

Any improvements to driveways or other public facilities would be required to be constructed to City Standards.

### **Building Design**

- E) The existing Mall structure would remain, but would be modified and updated to a more contemporary look. The proposed improvements for Phase I would include extending the southern elevation to the south approximately 80 feet to add additional floor and pedestrian area. The vacant retail space located to the east of the main Mall entrance (previously occupied by CVS) would be reconfigured and leased to new retailers and restaurants, some of which would have storefronts facing the parking lot adjacent to West Olive Avenue. Refer to Attachment F for the conceptual design of the building elevations for Phase 1 and Phase II, Alternative 1.

The building elevations would be updated to a more contemporary design. Instead of the building elevations being a consistent color and design, there will be a mixture of materials and colors, as well as the use of awnings and other architectural features to provide a more interesting and appealing design. The height of the new frontage would increase the building mass and would be approximately 50 feet tall.

Phase II, Alternative 1, would add the theater to the existing building between JC Penny's and Kohl's Department Stores. The roof would be opened to create a pedestrian Mall and open courtyard in front of the new theater. The height of the new theater would be approximately 50 feet tall and would continue the use of a more modern design for the building elevations.

Phase II, Alternative 2, would demolish the existing theater and two retail spaces to the east of the Merced Mall. Specific elevations for the proposed 70,000 square-foot theater have not been provided, the design and height of the movie theater would be consistent with the exterior additions completed under Phase I, and would be approximately 50 feet in height.

The building elevations and site design at Attachments C through F are very preliminary and conceptual only. The final designs would be approved by the Site Plan Review Committee prior to building permit issuance (Condition #10).

## **Site Design**

- F) The general layout of the site would not be changed with the proposed renovations. The driveway access would remain the same as well as the location of the parking areas. However, the parking lot on the south side of the Mall would be reconfigured as part of Phase I to allow for the proposed expansion.

The overall site would be more welcoming for pedestrians and bicyclists. Condition #12 requires pedestrian access between all buildings and connections to the public ways. Condition #13 requires that all walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.

With Phase II, Alternative 1, the roof of the Mall would be opened up to allow the construction of the theater and the creation of a pedestrian courtyard area as well as an outdoor dining area (refer to the drawings at Attachment F).

Phase II, Alternative 2, would modify the eastern portion of the site by demolishing the existing theater, Michael's, and the vacant retail space adjacent to Big Lots (see site plan at Attachment E). As described in the Parking section above, this alternative would reduce and reconfigure the parking on between the Mall and theater. It would also slightly modify the circulation of the site by providing a drive aisle and compact parking spaces along the south side of the Big Lots building. A pedestrian path is provided between the Mall and the theater.

## **Landscaping**

- G) The proposed renovation would include new landscaping for the site. As required by Condition #28, parking lot trees are required at a ratio of one tree for every six parking spaces. There are a number of trees on the site currently. When possible, those trees should remain or be relocated within the site (Condition #29). The building elevations provided include landscape planters within the outdoor courtyard area and along the sidewalk.

## **Neighborhood Impact/Interface**

- H) The project site is surrounded primarily by commercial uses, with the exception of the apartments to the north across Loughborough Drive and the convalescent hospital to the east. The construction of the project may have impacts on the surrounding uses, especially residential uses due to dust and noise. However, conditions of approval and mitigation measures have been included to help reduce these impacts by limiting construction to occur only between the hours of 7:00 a.m. to 7:00 p.m. and by requiring dust control measures to limit the spread of dust from the construction site.

After construction is completed, it's not anticipated that the project would cause additional impacts to the surrounding neighborhood.

The Draft Initial Study was circulated for the required 30-day review period. During that time, staff did not receive any formal comments from the public. Public hearing notices were sent to all property owners within 300 feet of the site advising them of the public

hearing to be held by the Planning Commission. To date, staff has not received any comments or concerns from the surrounding neighborhood.

### **Signage**

- I) Specific signs have not been proposed with this project. However, in the future, it's likely the applicant would request a modification to the City's Sign Ordinance to allow the existing Merced Mall pylon sign to be modified and updated. Currently, the existing free-standing pylon sign along Olive Avenue does not comply with the City's Sign Ordinance and therefore, could not be modified without being brought into compliance with the sign code regulations. Because the current sign ordinance would not allow a sign with a changeable marquee, the existing sign is not being modified at this time. All other signs on the site would be required to comply with the North Merced Sign Ordinance.

### **Environmental Clearance**

- J) The Planning staff has conducted an environmental review (Initial Study # 18-02) 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 #18-02 is being recommended (Enclosure 1). A Mitigation Monitoring Program (Exhibit B of Attachment H) will also be adopted.

### **Attachments:**

- A) Location Map
- B) Location Map with Parcel Numbers
- C) Site Plan - Phase I
- D) Site Plan – Phase II, Alternative 1
- E) Site Plan – Phase II, Alternative 2
- F) Building Elevations – Design Concept
- G) Roadway Segments/Intersections
- H) Draft Planning Commission Resolution

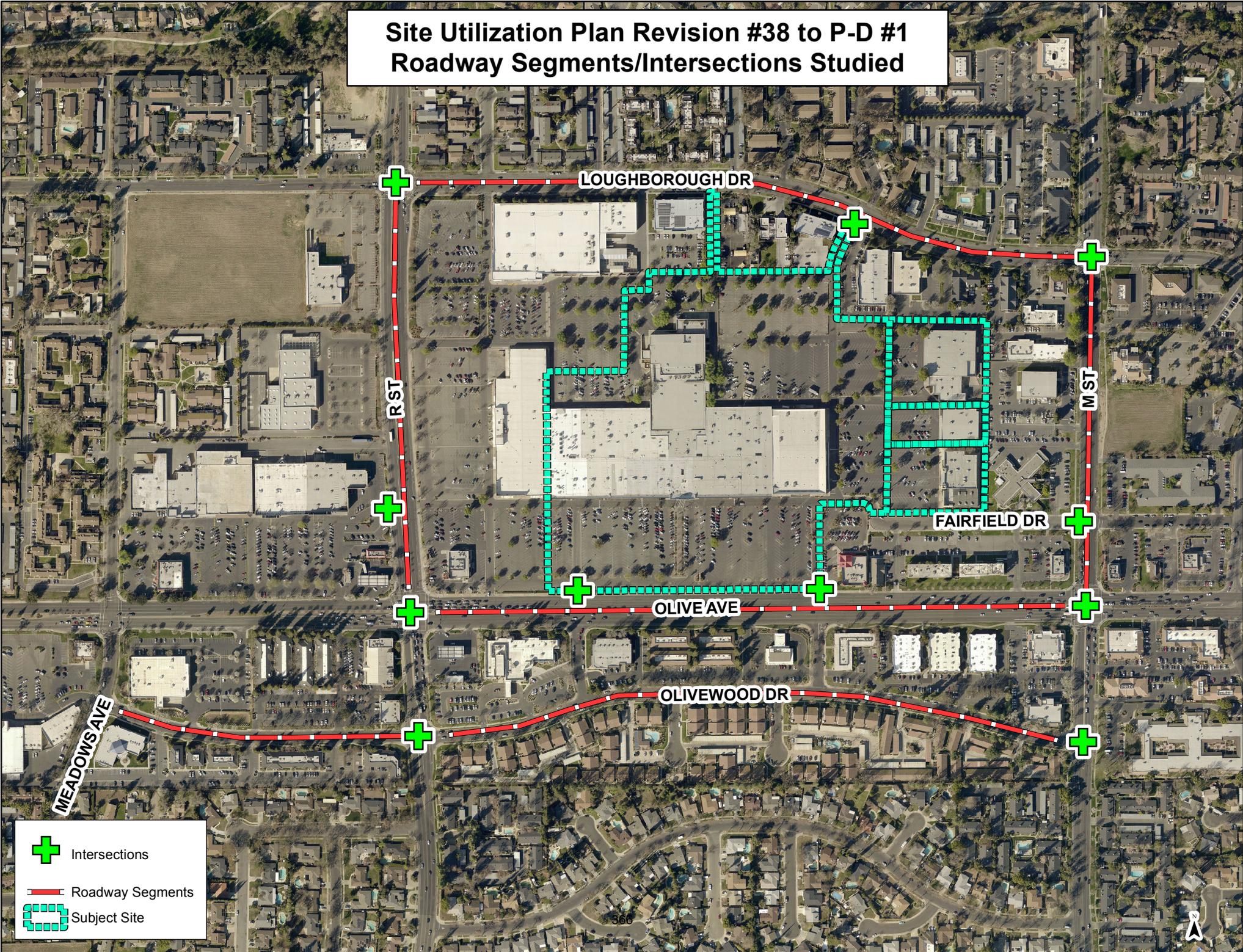
**For Attachments A through F, Attachment H, and Enclosure 1, please refer to Attachments 1 through 8 of Administrative Report 19-074.**

### **Enclosures**

- 1) Initial Study/Draft Mitigated Negative Declaration

Ref: N:\SHARED\PLANNING\STAFFREP\SR2019\SR 19-04 SUP Rev #38 to P-D #1 (Merced Mall).docx

# Site Utilization Plan Revision #38 to P-D #1 Roadway Segments/Intersections Studied



-  Intersections
-  Roadway Segments
-  Subject Site

**Planning Commission Minutes Excerpt**  
**JANUARY 23, 2019**

4.2 Site Utilization Plan Revision #38 to Planned Development (P-D) #1, initiated by Merced Mall LTD, property owners. This application is a request to allow the renovation and expansion of the Merced Mall located at 851 W. Olive Avenue. The Project would increase the leasable retail area of the Merced Mall and construct a new movie theater at one of two possible locations within the project site. The project site consists of approximately 52 acres and is generally located on the north side of Olive Avenue between M and R Streets. The site has a General Plan designation of Regional/Community Commercial (RC) and is zoned Planned Development (P-D) #1.

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #19-04.

Public testimony was opened at 7:49 p.m.

Speaker from the Audience in Favor:

BILL KENNEY, The Kenney Co., representative for the Applicant, Newport Beach, CA

Mr. KENNEY gave a brief overview of the applicant's basic plans for carrying out the expansion, but confirmed that no tenants have been confirmed for vacant retail areas proposed in the expansion plans. He also thanked City Planning staff for their assistance with this project.

No one spoke in opposition to the project.

Public Testimony was completed at 7:58 p.m.

M/S CAMPER-PADILLA, and carried by the following vote, to recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program regarding Initial Study #18-02, and approval of Site Utilization Plan Revision #38 to Planned Development (P-D) #1, subject to the Findings and thirty-eight (38) Conditions set forth in Staff Report #19-04 (RESOLUTION #4014):

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

NOES: None

ABSENT: None

ABSTAIN: None

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING A MITIGATED NEGATIVE  
DECLARATION FOR ENVIRONMENTAL REVIEW  
#18-02 AND SITE UTILIZATION PLAN REVISION  
#38 TO PLANNED DEVELOPMENT (P-D) #1  
ALLOWING THE RENOVATION OF THE MERCED  
MALL AND THEATRE, INCLUDING THE  
POSSIBILITY OF RELOCATING THE THEATRE  
ADJACENT TO THE MERCED MALL BUILDING**

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

SECTION 1. AMENDMENT TO CODE. The Site Utilization Plan for the property located within Planned Development (P-D) #1 described in Exhibit A and shown on the Map at Exhibit B, attached hereto, and by reference made a part of this Ordinance is hereby modified as shown on the Site Plan for Phase I and on the Site Plan for Phase II, Alternate 1 or Phase II, Alternate 2, Exhibits C, D, and E.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT. Based upon the evidence and testimony in the record at the City Council public hearing, the City Council exercising its independent judgment and review, hereby adopts and approves the Mitigated Negative Declaration following Environmental Review #18-02, pursuant to the California Environmental Quality Act.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

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 \_\_\_\_\_, 2019, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2019, 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/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney                      2-12-19  
Date

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Parcel C as shown on the map entitled "Parcel Map for Merced Mall," recorded in Book 58 at Page 19 of Merced County Records.

APN: 236-230-038

Parcel C-C as shown on the map entitled "Parcel Map for Pacific Telephone," recorded in Book 33 at Page 49 of Merced County Records.

APN: 236-230-014

Parcel A as shown on the map entitled "Parcel Map for "U.A. Regency Theatre," recorded in Book 60 at Page 28 of Merced County Records.

APN: 236-230-015

Parcel B as shown on the map entitled "Parcel Map for "U.A. Regency Theatre," recorded in Book 60 at Page 28 of Merced County Records.

APN: 236-230-016

**Site Utilization Plan Revision #38 to P-D #1  
Merced Mall Renovation - Assessor's Parcel Numbers**

LOUGHBOROUGH DR

R ST

M ST

236-220-014

236-220-015

236-220-038

236-220-016

FAIRFIELD DR

OLIVE AVE



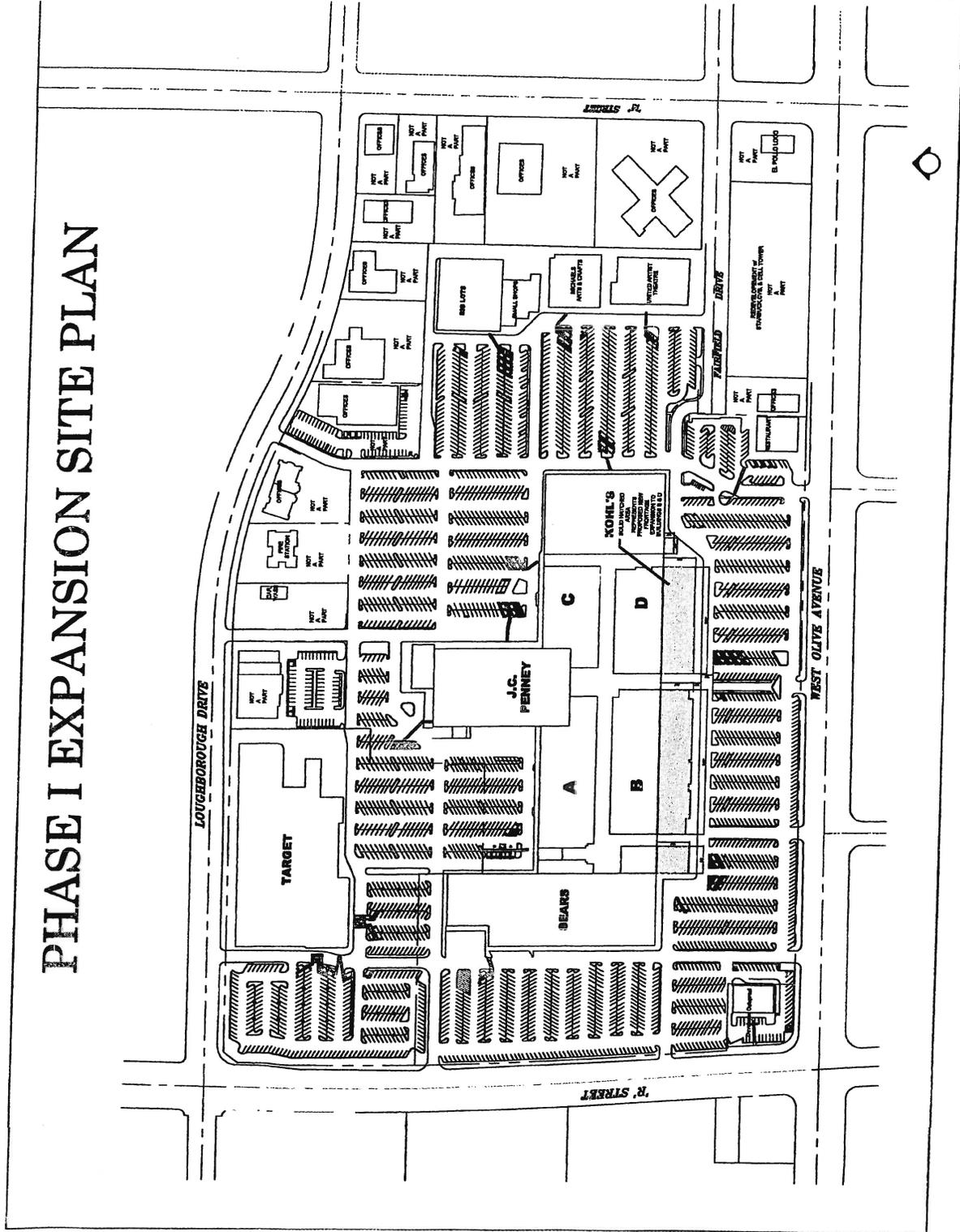
Subject Site

371

N



# PHASE I EXPANSION SITE PLAN



<b>Project Data</b>	
<b>EXISTING</b>	<b>PROPOSED PHASE I</b>
TOTAL AREA: 110,000 SQ. FT. TOTAL FLOOR AREA: 1,200,000 SQ. FT. TOTAL RETAIL AREA: 1,000,000 SQ. FT. TOTAL SERVICE AREA: 200,000 SQ. FT. TOTAL OFFICE AREA: 100,000 SQ. FT. TOTAL GARAGE AREA: 50,000 SQ. FT. TOTAL PARKING SPACES: 1,500	TOTAL AREA: 110,000 SQ. FT. TOTAL FLOOR AREA: 1,200,000 SQ. FT. TOTAL RETAIL AREA: 1,000,000 SQ. FT. TOTAL SERVICE AREA: 200,000 SQ. FT. TOTAL OFFICE AREA: 100,000 SQ. FT. TOTAL GARAGE AREA: 50,000 SQ. FT. TOTAL PARKING SPACES: 1,500
<b>CODDING</b> Merced Mall 1000 Loughborough Drive Merced, California 95354	
PROJECT: Merced Mall LOCATION: Merced, California EXHIBIT: Exhibit A2	
DRAWN BY: [Name] CHECKED BY: [Name] DATE: [Date]	
SHEET NO. 1 OF 1 PROJECT NO. EX-A2	

EXHIBIT C





**RECORDING REQUESTED BY:**

City of Merced, A California charter  
municipal corporation

**WHEN RECORDED MAIL TO:**

City of Merced  
City Clerk  
678 West 18<sup>th</sup> Street  
Merced, California 95340

(Above for Recorder's Use Only)

**LEGISLATIVE ACTION AGREEMENT**

THIS AGREEMENT is made and entered into as of this 21 day of FEBRUARY 2019, by and between the City of Merced, a California Charter Municipal Corporation ("City") and Merced Mall LP, a California Limited Partnership ("Owner").

**WITNESSETH**

WHEREAS, Owner has applied for a Site Utilization Plan Revision to Planned Development (P-D) #1 (the "Entitlements") for the Merced Mall Property generally located on the north side of Olive Avenue between M and R Streets, and as legally described on Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, City is willing to consider the Owner's request provided that certain conditions are met; and

WHEREAS, the Owner is willing to enter into this Legislative Action Agreement with respect to the Property and the project contemplated by the Entitlements (the "Project") should the Entitlements be approved or conditionally approved by the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. The Owner, for themselves and all successors thereto, agree to pay all City and school district fees, taxes, and/or assessments applicable to the Property and the Project in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions set forth in Planning Commission Resolution #4014, Exhibit “C” attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time. The foregoing obligation shall apply to each Owner with respect to the portion of the Property owned by that Owner at the time payment or performance is due.

2. The Owner desires to comply with the conditions of approval set forth on Exhibit “C” and within this Agreement with respect to development of the Project and acknowledges that the conditions are necessary to mitigate the environmental impact caused by the Owner’s development of the Project on the Property or are necessary to offset the costs to the City generated by the Owner’s development of the Project including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code. The foregoing obligation shall apply to each

Owner with respect to the portion of the Property owned by that Owner at the time compliance is required.

3. The Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and its/their officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments (hereinafter "Claims") against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul the approval of the Entitlements by 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 Entitlements. Furthermore, the Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which the Owner's Project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the Owner shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. City, on its part, agrees to approve the Entitlements in accordance with Exhibits “D,” “E,” and “F” (Site Plan, Phase I, Site Plan Phase II, Alternate 1, or Site Plan Phase II, Alternate 2, with the final Site Plan for Phase II to be determined by the Owner.

6. No building permit or other permit shall be issued for the Project that is not in compliance with this Agreement.

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit “A” and shown on Exhibit “B.”

8. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be enforceable by the City or by any present or future owner of any of the land described in Exhibit “A” and shown on Exhibit “B.”

9. The Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement.

10. In the event of default by the Owner, and in addition to any other remedy available to the City, the City shall have the right to rezone the land back to its original designation.

11. In the event that either City or the Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same

or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

12. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

13. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

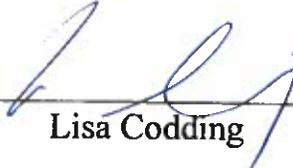
APPROVED AS TO FORM:

BY: Priscilla A. Miller 2-1-19  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

OWNER  
MERCED MALL LP,  
a California limited partnership  
By: MERCED MALL LLC,  
a California limited liability company  
Its General Partner  
By: CODDING ENTERPRISES LP,  
a California limited partnership  
Its Sole Member  
By: CODDING INVESTMENTS, INC.,  
a California corporation  
Its General Partner

BY: \_\_\_\_\_  
  
Lisa Coddling

ITS: CEO \_\_\_\_\_

Taxpayer I.D. No. 94-2379331

ADDRESS: 3510 Unocal Place, Ste. 300  
Santa Rosa, CA 9540

TELEPHONE: 707-978-5800

FAX: \_\_\_\_\_

EMAIL: [leroyk@coding.com](mailto:leroyk@coding.com)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Sonoma

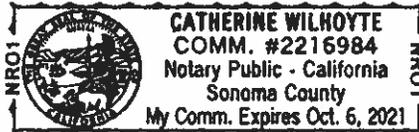
On 02-21-2019 before me, Catherine Wilhoite, Notary Public  
(insert name and title of the officer)

personally appeared Lisa Coddina  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are -  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature C Wilhoite (Seal)



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Parcel C as shown on the map entitled "Parcel Map for Merced Mall," recorded in Book 58 at Page 19 of Merced County Records.

APN: 236-220-038

Parcel C-C as shown on the map entitled "Parcel Map for Pacific Telephone," recorded in Book 33 at Page 49 of Merced County Records.

APN: 236-220-014

Parcel A as shown on the map entitled "Parcel Map for "U.A. Regency Theatre," recorded in Book 60 at Page 28 of Merced County Records.

APN: 236-220-015

Parcel B as shown on the map entitled "Parcel Map for "U.A. Regency Theatre," recorded in Book 60 at Page 28 of Merced County Records.

APN: 236-220-016

**Site Utilization Plan Revision #38 to P-D #1  
Merced Mall Renovation - Assessor's Parcel Numbers**

LOUGHBOROUGH DR

R ST

M ST

236-220-014

236-220-015

236-220-016

236-220-038

FAIRFIELD DR

OLIVE AVE



Subject Site



**EXHIBIT B**

**CITY OF MERCED**  
**Planning Commission**

**Resolution #4014**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **Site Utilization Plan Revision #38 to Planned Development #1**, initiated by Merced Mall LTD, property owners. This application is a request to allow the renovation and expansion of the Merced Mall located at 851 W. Olive Avenue. The Project would increase the leasable retail area of the Merced Mall and construct a new movie theater at one of two possible locations within the project site. The project site consists of approximately 52 acres and is generally located on the north side of Olive Avenue between M and R Streets. The site has a General Plan designation of Regional/Community Commercial (RC) and is zoned Planned Development (P-D) #1; also known as Assessor's Parcel No. 236-220-038; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through J of Staff Report #19-04; and,

**WHEREAS**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully 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 B) regarding Initial Study #18-02, and approval of Site Utilization Plan Revision #38 to Planned Development (P-D) #1, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner CAMPER, seconded by Commissioner PADILLA, and carried by the following vote:

**AYES:** Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe and Chairperson Dylina

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

PLANNING COMMISSION RESOLUTION # 4014

Page 2

January 23, 2019

Adopted this 23<sup>rd</sup> day of January 2019

  
\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

**Attachment:**

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

n:\shared\planning\PC Resolutions\SUP Rev #38 to PD #1 (Merced Mall Expansion)

**Conditions of Approval**  
**Planning Commission Resolution #4014**  
**Site Utilization Plan #38 to Planned Development (PD) #1**

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan for Phase I (Attachment C of Planning Commission Staff Report #19-04), the Site Plan for either Phase II, Alternative 1, or Phase II, Alternative 2 (Attachments D and E of Planning Commission Staff Report #19-04), and the conceptual elevations found at Attachment F of Planning Commission Staff Report #19-04, except as modified by the conditions or as approved by the Site Plan Review Committee.
2. The following conditions apply to the new renovation areas of the Merced Mall and not to existing development that won't be modified under this renovation. Details to be worked out with Planning Staff.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with all applicable conditions previously approved for this site
5. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
6. Approval of the Site Utilization Plan Revision is subject to the applicant's entering into a written (legislative action) 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. 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 (with counsel selected by the City), 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
8. 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.
9. The project shall comply with all mitigation measures required by the mitigation monitoring program for Initial Study #18-02 (Exhibit B of Draft Planning Commission Resolution at Attachment H of Staff Report #19-04).

10. In compliance with Merced Municipal Code Section 20.20.020 Q, Site Plan Review approval is required prior to development to address conformance with the standards of Planned Development (P-D) #1.
11. Umbrellas, fencing, or other outdoor features used for the outdoor seating areas shall not include advertising for any specific business or brand and shall be uniform in color to complement the buildings.
12. The site shall be provided with pedestrian access between the buildings and connection to public ways (i.e., public sidewalks, streets, etc.).
13. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment. Pedestrian access shall be reviewed and approved by the Site Plan Review Committee prior to a building permit being issued.
14. All mechanical equipment shall be screened from public view.
15. 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's Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks.
16. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access shall be provided for all reconfigured parking areas. .
17. If changes are made to the site that would affect the current system used by the UC Merced Cat Tracks System and the Merced Transit System (The Bus), the developer shall work with UC Merced (Cat Tracks) and the Merced Transit System (The Bus) to determine the best location for public transit facilities. If relocated, the location of these facilities will be subject to review and approval by the Site Plan Review Committee.
18. Any driveways that are modified, added, or relocated shall comply with the City of Merced Design Standards for commercial driveways and are to be reviewed by the Fire Department as part of the review of the improvement plan submittals.

19. Any missing improvements along the project frontage shall be installed to meet City Standards. Any existing improvements that have been damaged or otherwise do not meet current City Standards shall be repaired or replaced to meet City Standards. This includes, but is not limited to, sidewalk, curb, gutter, street trees, and street lights.
20. Bicycle parking shall meet the minimum requirements of the California Green Building Code and MMC 20.38.080.
21. The project shall comply with the Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
22. All storm water shall be retained onsite and metered out to the City's storm water system in accordance with City Standards. The City Engineer shall approval final design of the storm drain system prior to construction.
23. All new utilities (including electrical lines) shall be installed underground.
24. A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire).
25. All landscaping shall comply with the Section 20.36.040 – Landscape and Sprinkler Plans, of the City's Zoning Ordinance in addition to all applicable state laws.
26. Full landscape and irrigation plans shall be submitted at the time of building permit application.
27. 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 parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
28. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards for any new or modified parking areas. 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). Trees shall be installed at a ratio of at least one tree for each six parking spaces. The trees may be located in planter areas that protrude into the parking areas, or which run along

**EXHIBIT A**

**OF PLANNING COMMISSION RESOLUTION #4014**

the edge of the parking areas and shall be located to accommodate any carport or shade structures. Details regarding the above to be worked out with Planning Staff and/or approved by the Site Plan Review committee.).

29. When possible, mature existing trees should remain or be relocated on the site. Details to be worked out with Planning Staff.
30. As depicted in the elevations provided, landscape planters shall be placed throughout the courtyard area and along the sidewalk area. However, the planters shall not block access to the site, stores, or other facilities. All planters shall provide the necessary clearance to meet handicap accessibility requirements.
31. All landscaping on the site shall be maintained in a healthy and aesthetically pleasing manner.
32. Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District.
33. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
34. Construction activity shall only take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless otherwise approved by the Chief Building Official.
35. The project shall comply with all FEMA Flood Zone requirements and with the California 200-year Urban Level of Flood Protection requirements.
36. The premises shall remain clean and free of debris, weeds, and graffiti at all times.
37. All signs shall comply with the requirements of the North Merced Sign Ordinance. No free-standing A-Frame or sandwich board-type signs shall be allowed. All other moveable temporary signs are prohibited as well. Temporary banners may be installed on a building wall in compliance with the City's Sign Ordinance and after obtaining a Temporary Banner Permit from the Planning Department. A building permit shall be obtained for all permanent signs.
38. All businesses selling and/or serving alcoholic beverages shall comply with all regulations of the California Alcoholic Beverage

Control and the City of Merced. Any future bar, nightclub, cocktail lounge, or similar use would require a Conditional Use Permit. Any business less than 20,000 square feet in size selling alcoholic beverages for off-site consumption would also require a Conditional Use Permit.

n shared planning PC Resolutions: SUP Rev#38 to PD #1 (Merced mall Expansion) Exhibit A

## MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Merced Mall Expansion Project (project). The MMRP, which is provided in Table A, lists mitigation measures recommended in the IS/MND for the project and identifies mitigation monitoring requirements. The MMRP must be adopted when the City Council makes a final decision on the project.

### 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

As stated above, 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" ordinance (Merced Municipal Code [MMC] 19.28). The City's program was developed in accordance with the advisory publication, Tracking CEQA Mitigation Measures Under AB 3180, from the Governor's Office of Planning and Research.<sup>1</sup>

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

- 1) The requirements of the adopted mitigation monitoring program for the Merced Mall Expansion Project 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 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

<sup>1</sup> Governor's Office of Planning and Research. 1994. Tracking CEQA Mitigation Measures Under AB 3180. Sacramento, California.

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. Development Services 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.

**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 initiate an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall require 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. 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 for the project. The columns within the tables are defined as follows:

Impact Statement:	Describes the potential impact that could result from implementation of the proposed project.
Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Monitoring Responsibility:	This column references any City department or public agency with which coordination is required to satisfy the identified mitigation measure.
Monitoring Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p><b>INITIAL STUDY IMPACTS AND MITIGATION MEASURES</b></p> <p><b>4.3 AIR QUALITY</b></p> <p>The project could violate air quality standards during the construction period.</p>	<p><b>AIR-1:</b> Consistent with SJVAPCD Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions), the following controls are required to be implemented at the construction site:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.</li> <li>• 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.</li> <li>• 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.</li> <li>• All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (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.)</li> <li>• 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.</li> </ul>	<p>Development Services, Building Division</p>	<p>Contractors shall be responsible for including in contract specifications prior to issuance building permit and measures are implemented throughout duration of construction activities.</p>	
<p><b>4.4 BIOLOGICAL RESOURCES</b></p> <p>The project would result in the removal of trees that could adversely affect nesting</p>	<p><b>BIO-1:</b> The following measures shall be implemented to reduce potential impacts to nesting birds:</p>	<p>Development Services, Building</p>	<p>The applicant and contractors shall be</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
birds.	<ul style="list-style-type: none"> <li>• If tree removal will occur during the nesting season (February 1 to August 31), a qualified biologist shall survey all suitable nesting habitat in the BSA for presence of nesting birds. This survey shall occur no more than 10 days prior to the start of construction. If no nesting activity is observed, work may proceed as planned. If an active nest is discovered, a qualified biologist shall evaluate the potential for the proposed project to disturb nesting activities. The evaluation criteria shall include, but are not limited to, the location/orientation of the nest in the nest tree, the distance of the nest from the BSA, and line of sight between the nest and the BSA.</li> <li>• California Department of Fish and Wildlife (CDFW) shall be contacted to review the evaluation and determine if the project can proceed without adversely affecting nesting activity.</li> <li>• If work is allowed to proceed after nesting activity has been observed, a qualified biologist shall be on-site daily during construction activities to monitor nesting activity. The biologist shall have the authority to stop work if it is determined the project is adversely affecting nesting activities.</li> </ul>	Division	responsible for implementing the measures throughout duration of construction activities.	
<p><b>4.5 CULTURAL RESOURCES</b></p> <p>Construction of the project could adversely affect unknown historic resources.</p>	<p>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.</p> <p>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</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p>Construction of the project could adversely affect unknown archaeological resources.</p>	<p>Implementation. These additional studies may include, but are not limited to recordation, archaeological excavation, or other forms of significance evaluations.</p> <p>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:</p> <p>"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; flakes of, 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."</p> <p>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.</p> <p>CUL-2: Implement Mitigation Measure CUL-1.</p>	<p>Development Services, Building Division</p>	<p>The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
<p>Construction of the project could disturb unknown human remains.</p>	<p><u>CUL-3:</u> 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.</p>	<p>Development Services, Building Division</p>	<p>The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.</p>	
<p><b>4.7 GREENHOUSE GAS EMISSIONS</b> The project would directly or indirectly generate greenhouse gas emissions.</p>	<p><u>GHG-1:</u> 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:</p> <ul style="list-style-type: none"> <li>● The project applicant shall provide a pedestrian access network that internally links all uses and connects to existing external streets and pedestrian facilities.</li> <li>● 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.</li> <li>● 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, roundabouts, and speed humps.</li> </ul>	<p>Development Services, Planning Division</p>	<p>The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
	<ul style="list-style-type: none"> <li>The project shall provide for car sharing programs. Accommodations for such programs could include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.</li> <li>The project applicant shall plant trees to provide shade.</li> <li>The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.</li> </ul>			
<b>4.9 HYDROLOGY AND WATER QUALITY</b>				
The project could result in short-term construction-related water quality impacts.	<p>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.</p> <p>HYDRO-2: To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. 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.</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	
The project could result in stormwater pollution.		Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.	
<b>4.12 NOISE</b>				
Construction could result in a temporary or periodic increase in ambient noise levels in the project vicinity.	<p>NOI-1: The project contractor shall implement the following measures during construction of the project:</p> <ul style="list-style-type: none"> <li>Equip all construction equipment, fixed or mobile, with</li> </ul>		The applicant and contractors shall be responsible for	

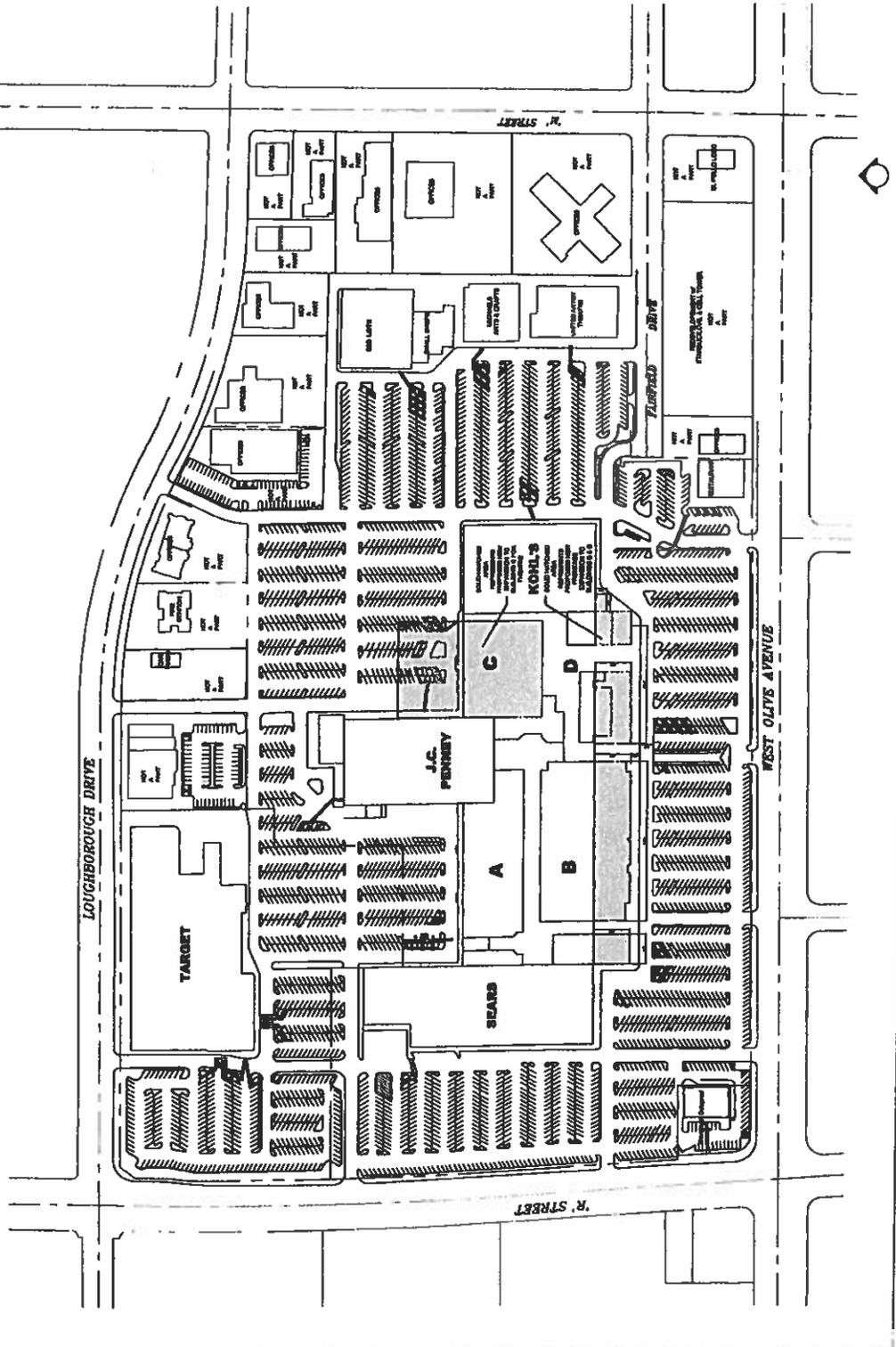
**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
	<p>properly operating and maintained mufflers consistent with manufacturers' standards.</p> <ul style="list-style-type: none"> <li>Ensure that all general construction related activities are restricted to between the hours of 7:00 a.m. and 6:00 p.m. to avoid noise-sensitive hours of the day.</li> <li>Designate a "disturbance coordinator" at the City who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler) and would determine and implement reasonable measures warranted to correct the problem.</li> </ul>		<p>implementing the measures throughout duration of construction activities.</p>	

Source: LSA (2019).



# PHASE II ALTERNATE I EXPANSION SITE PLAN



<b>EXISTING</b>		<b>PROPOSED PHASE I</b>		<b>PHASE II ALTERNATE I</b>	
Area	sq. ft.	Area	sq. ft.	Area	sq. ft.
Office	10,000	Office	10,000	Office	10,000
Warehouse	50,000	Warehouse	50,000	Warehouse	50,000
Other	5,000	Other	5,000	Other	5,000
<b>TOTAL</b>	<b>65,000</b>	<b>TOTAL</b>	<b>65,000</b>	<b>TOTAL</b>	<b>65,000</b>

**CODDING**  
Merced Mall  
1000 California Street  
Merced, California

**Merced Mall**  
**Merced CALIFORNIA**  
Exhibit A3





**ADMINISTRATIVE REPORT**

**Agenda Item K.1.**

Meeting Date: 3/4/2019

*Report Prepared by: Kim Espinosa, Planning Manager, Development Services Department*

**SUBJECT:** Report - Approval of Professional Services Agreement with EMC Planning Group in the Amount of \$423,136 for the Preparation of a North Merced Annexation Feasibility Study

**REPORT IN BRIEF**

Considers approving a Professional Services Agreement with EMC Planning Group in the amount of \$423,136, for the preparation of a North Merced Annexation Feasibility Study.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving a Professional Services Agreement with EMC Planning Group, Inc., in the amount of \$423,136, for the preparation of a North Merced Annexation Feasibility Study; and,
- B. Authorizing a Supplemental Appropriation in Fund 017-Development Services in the amount of \$220,136; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the documents; and,
- D. Directing City staff to pursue the development of a North Merced Annexation Feasibility Study Reimbursement Fee to recover the cost of the project from future applicants for annexation within the Study Area.

**ALTERNATIVES**

- 1. Approve the agreement and budget adjustments as recommended by staff; or,
- 2. Approve the agreement and budget adjustments, subject to modification by City Council (identify specific items to be amended in the motion); or,
- 3. Deny; or,
- 4. Refer to staff for reconsideration of specific items (to be addressed in the motion); or,
- 5. Continue to a future City Council meeting (date and time to be specified in the motion).

**AUTHORITY**

The Cortese-Knox-Hertzberg Local Reorganization Act of 2000 establishes procedures for city annexations and other local government changes of organization.

## **CITY COUNCIL PRIORITIES**

The FY 2018-19 Council Goals and Priorities identified “Future Annexations/Growth of City” under “Future Planning.”

## **DISCUSSION**

### Background

On January 3, 2012, the Merced City Council adopted the *Merced Vision 2030 General Plan*, which includes a 28,000-acre growth boundary [known as the Specific Urban Development Plan (SUDP)/Sphere of Influence (SOI)]. In August 2016, the City of Merced executed a new Tax Sharing Agreement with the County of Merced, which allows annexations to the City to move forward.

Prior to the adoption of the General Plan, throughout the 1980’s, 1990’s, and early 2000’s, the City grew at a steady pace and annexations occurred on a regular basis. In fact from 1997-2008, 20 annexations were completed adding over 3,835 acres of residential, commercial, and industrial land to the City’s inventory. The last annexation to the City was completed in 2009, just after the start of the great recession. From 2009 to 2015, no annexation applications were considered by the City due in part to the downturn in the economy and housing market as well as the lack of a tax sharing agreement with the County.

In 2015 and 2016, two annexation applications for properties directly adjacent to the City Limits (of approximately 8 and 28 acres respectively) were submitted to the City, and have been going through the environmental review process and City approval process. Also during this time, the City began work on the City’s Wastewater Collection System Master Plan to address wastewater collection infrastructure required to serve the City’s Sphere of Influence; this work is on-going.

Starting in 2017 and into 2018, the City began meeting with property owners interested in pursuing annexation to the City of Merced for large properties within North Merced in the vicinity of the UC Merced campus. The potential annexations currently being considered in the North Merced Area are of various sizes, locations, and purposes or potential uses. Annexation laws and adopted LAFCO procedures, as well as the City’s General Plan policies, make those areas immediately adjacent to the existing city limits, or “contiguous,” the easiest and most likely areas to annex. Those areas of interest that are not adjacent to the current city limits (“non-contiguous”) may be annexed, but will require a larger working group of property owners to ensure the area can be annexed as one contiguous area. The City’s General Plan also discusses some annexation priorities to create continuity with UC Merced and promote economic development.

The City has consulted with Merced County LAFCO staff regarding the general interest and location of the proposed annexations. Given the number of interested potential applicants and scale of the potential annexations, LAFCO would like the City to consolidate the annexations into as few as is feasible that also provide for a comprehensive planning and service approach that is orderly and logical, which is consistent with the City’s General Plan and Bellevue Community Plan (BCP) policies. (The BCP calls for annexations to begin along the Bellevue Corridor in order to create continuity with UC Merced.) Additionally, LAFCO is discouraging any annexations that create

irregular boundaries.

In May 2018, City staff held a joint meeting with the owners and developers of large parcels in North Merced regarding a potential North Merced Annexation. Merced County LAFCO staff was also present. City staff indicated that the City would be moving forward with obtaining consulting services to determine the feasibility of a large North Merced annexation. The property owners were also told that the City would be seeking reimbursement for the cost of those consulting services from those properties which will benefit from the proposed annexation.

The North Merced Annexation Feasibility Study Area consists of approximately 7,600 acres within the City's Sphere of Influence, generally located east of G Street and north of Yosemite Avenue (Attachment 1). The Study Area currently has approximately 700 separate parcels and over 600 property owners. However, there are approximately 10 to 15 property owners who control large areas who have expressed strong interest in annexation to the City.

#### Request for Proposals Process

On August 27, 2018, City staff sent out a Request for Proposals (RFP) to 15 to 20 consultants, with proposals due on October 4, 2018. The City received 2 proposals-one from EMC Planning Group and one from Quad-Knopf. On November 15, 2018, the two consultant teams made presentations to the group of North Merced stakeholders above and were also interviewed separately by City staff. Merced LAFCO Executive Director Bill Nicholson also participated in the interview process. The feedback from the stakeholders and the consensus of City and LAFCO staff was strongly in favor of EMC Planning Group based on their proposed consultant team, experience with similar projects, and their comprehensive approach to the process.

#### Proposed Agreement and Scope of Work

Subsequent to the interviews, City staff asked EMC to modify their proposal to include additional services, including additional public outreach and an expanded wastewater analysis, including plant capacity and phasing options, in support of the formation of a future assessment district for infrastructure improvements.

EMC Planning Group would be the primary consultant and would provide oversight of all project tasks and subconsultants. EMC's consulting team involves several subconsultants, including Applied Development Economics (economic/market conditions); Stantec (wastewater); KD Anderson & Associates (traffic); Red Suit LLC (community engagement); and Northstar Engineering (infrastructure planning).

The scope of work (Exhibit A of Attachment 2) includes the following services for the amount of \$423,136:

- *Project Management and Project Kickoff Meeting (Tasks 1 and 2).*
- *Baseline Conditions (Task 3):* Review all previously adopted plans, environmental documents, entitlement approval documents, as well as supporting information for creating a project baseline and general information, such as current and potential land uses, zoning,

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environmental constraints, numbers of registered voters living in the study area, available services and utilities, including wastewater, and economic/market conditions.

- *Agency, Service Provider, and Elected Official Meetings (Task 4)*: Conduct up to 4 meetings with Merced County LAFCO, Merced County, the City, and other current and future approval agencies and service providers to develop a framework of policy and other critical issues that will need to be addressed in any future annexation application(s). This task will also include briefings with City and County elected officials.
- *Community Engagement (Task 5)*, including:
  - *Public Outreach/Education*: Tasks include the creation of a database of stakeholders, preparation of an informational handout and FAQ sheets; and social media resources.
  - *Workshops*: This would include 2 community workshops and 1 joint Planning Commission/City Council study session at various points in the Study to gather input from stakeholders and the public.
  - *Assessment Interviews*: This would include the preparation of a questionnaire and up to 15 stakeholder assessment interviews to be conducted both in person and over the phone.
- *Annexation Alternatives Analysis (Task 6)*: Provide an analysis of the benefits and constraints of potential alternatives to annexation, such as out of boundary service agreements, establishment of out of boundary service districts, etc.
- *Feasibility Report (Task 7)*: Preparation of a formal analysis, including findings and recommendations, including annexation pathway options, based on economic feasibility, available infrastructure, landowner and voter interests, development scenarios, etc.
- *Feasibility Report Presentation (Task 8)*: EMC will take the lead in presenting the final study to up to 2 Planning Commission and 2 City Council public hearings.

The anticipated time frame to complete the above work (except the public hearings) would be approximately 6 months or by September 2019.

### Funding for the Project

When the City began the RFP process, Staff had hoped to fund the project through reimbursement agreements with various large North Merced property owners. However, it has become clear over the last few months that a number of the property owners would likely not be willing to provide those funds and there would be an issue of fairness regarding only a few property owners participating. Therefore, City staff began pursuing various funding options and determined that upfront funding was available from Planning's Professional Services account, the fund balance in the Development Services Fund, and the Wastewater fund (specifically for the wastewater related tasks provided by Stantec).

It was also determined that in order to be fair to all the property owners in the study area that the City should develop a reimbursement fee for the process which will be charged to future applicants for annexation within the Study Area. Based on the final cost of the study (\$423,136) and the 7,668-acre Study Area, the fee will generally be approximately \$55.18 per acre. Administrative costs and annual adjustments based on inflation will also need to be added into the final fee so that is a preliminary number. Because establishing new fees requires several public hearings and nexus findings, if the

City Council agrees, City staff will return to the City Council in the future with a proposed reimbursement fee that will be added to the Planning Division's Development Application Fee Schedule.

### Recommendation

City staff recommends that the City Council approve the professional services agreement with EMC Planning Group in the amount of \$423,136, approve the associated budget adjustments, and direct staff to develop a reimbursement fee to cover the cost of the study to be charged to future annexation applicants within the Study Area.

### **IMPACT ON CITY RESOURCES**

The recommendation includes approval of a supplemental appropriation in the amount of \$220,136 in Fund 017-Development Services from the current Fund Balance. \$100,000 was already available in the Planning Division's Professional Services account and another \$103,000 is available in Wastewater Fund 551 "Projects to be Determined." The Finance Officer will make the budget adjustments necessary to pay the consultant.

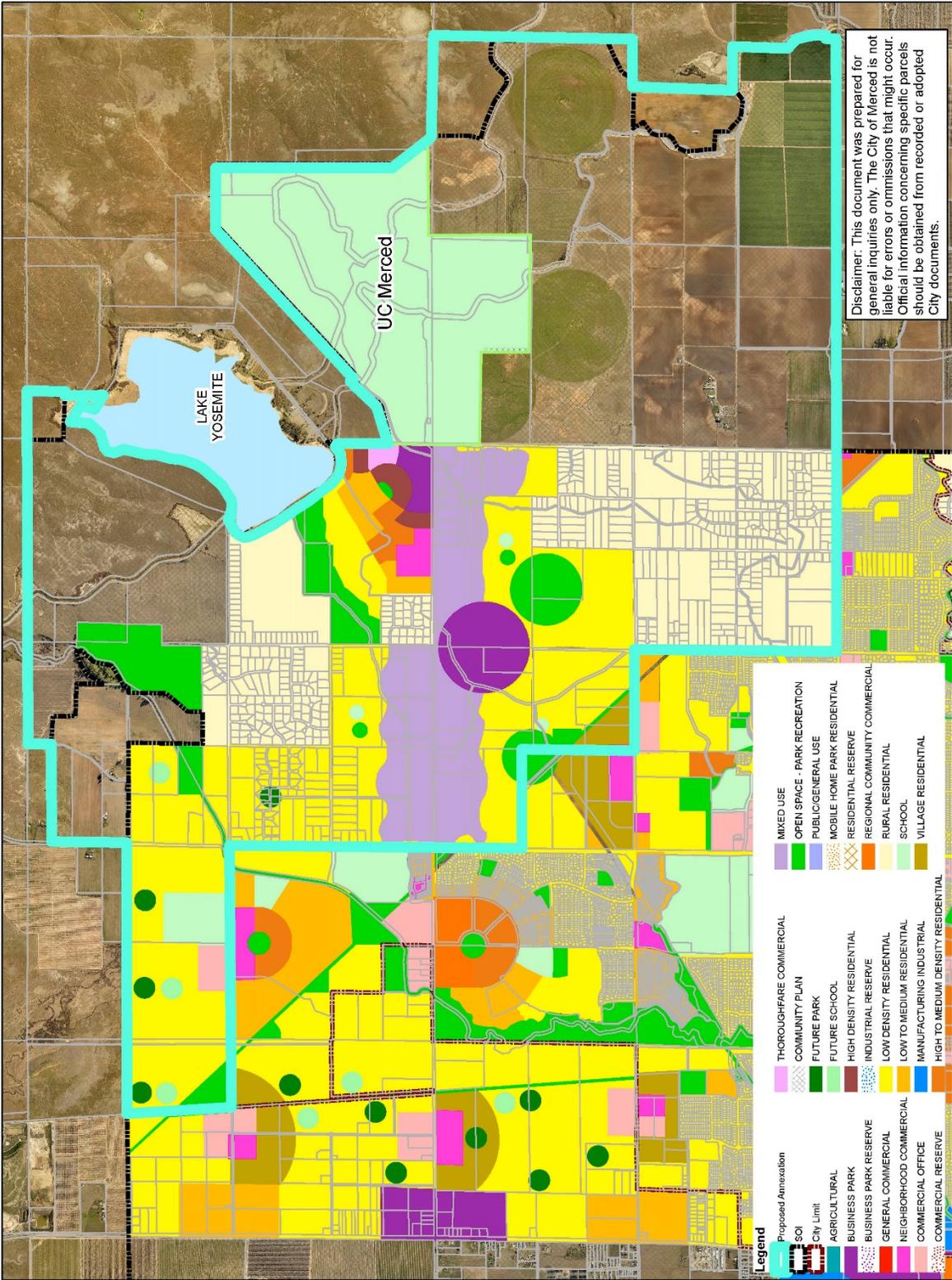
### **ATTACHMENTS**

1. Map of North Merced Annexation Feasibility Study Area
2. Professional Services Agreement with EMC Planning Group
3. Presentation

# North Merced Annexation

Proposed Annexation of  
~7668.858 Acres

Annexation Area contains  
689 Parcels



# North Merced Annexation Feasibility Study Area

Document Path: N:\SHARED\PLANNING\ANNEXATIONS\north\_merced\_annexation\_rfp.mxd

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as “City”) and EMC Planning Group, Inc., a California Corporation, whose address of record is 301 Lighthouse Avenue, Suite C, Monterey, California 93940 (hereinafter referred to as “Consultant”).

WHEREAS, City is undertaking a project to prepare a North Merced Annexation Feasibility Study for approximately 7,600 acres in the City’s northern growth area (the “Project”); and

WHEREAS, Consultant represents that it possesses the labor and professional skills and expertise to provide planning services in connection with said Project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the planning environmental services described in Exhibit “A” attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Development Services or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit “A” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. COMPENSATION. Payment by the City to the Consultant shall be made monthly in proportion to the services based on time and materials specified in the fixed fee, for work satisfactorily performed within each phase. For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Four Hundred Twenty-Three Thousand One Hundred Thirty-Six Dollars (\$423,136.00).

5. METHOD OF PAYMENT. Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. INDEPENDENT CONTRACTOR. It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System

(PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

- a. Workers' Compensation Insurance. Reserved.
- b. General Liability.
  - (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.

- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to

in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

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CONSULTANT  
EMC PLANNING GROUP, Inc.,  
A California Corporation

BY:   
\_\_\_\_\_  
Michael J. Groves  
President

Taxpayer I.D. No. 77-126607

ADDRESS: 301 Lighthouse Ave,  
Suite C  
Monterey, CA 93940

TELEPHONE: 831-649-1799 Ext. 201

FAX: \_\_\_\_\_

E-MAIL: groves@emcplanning.com

# Exhibit A

## Scope of Work

### North Merced Annexation Feasibility Study

#### 2.1 SCOPE OF WORK

The scope of work generally follows the requirements set forth in Section III.B of the RFP. Our Team's intention is to execute the scope of work in collaboration with City staff and with maximum efficiency.

##### **Task 1 Project Management**

This task includes contract administration, insurance compliance, project team coordination, internal team meetings, monthly invoices, printing costs, and other management-related tasks.

**Deliverables:** Monthly invoices identifying staff, hours, rates, and amount for each task.

**Assumptions:** None.

##### **Task 2 Project Kickoff Meeting**

As an initial task, the EMC Planning Group Team will organize a kick-off meeting with City staff to discuss the feasibility study scope and schedule. It will be critical to discuss City staff's knowledge of the stakeholders who have expressed interest to date and staff's prior communications with them. It is crucial for our Team not to duplicate prior City staff efforts and to streamline our effort by having full understanding of City staff efforts conducted to date and resource information related to those efforts. Meeting topics will also include communications protocol, extent of City staff role/assistance to the Team, definition of existing plan and resource information to support the existing conditions report and other deliverables, public outreach approach and refinements as necessary, and other issues that are important at early stages of the project.

**Deliverables:** Meeting agenda, attendance at a kickoff meeting with City staff, and a memorandum addressing key outcomes of the meeting.

**Assumptions:** The kickoff meeting will be held at the City of Merced Planning Division office in Merced. Any significant changes to the scope of work proposed by City staff as an outcome of the kick-off meeting may require a contract amendment.

## **Task 3 Research Baseline Conditions**

### **Environmental Resource Baseline Conditions**

This task focuses on collecting and reporting a range of environmental resource baseline conditions and land use and policy information that will influence how the annexation implementation strategy is crafted. Baseline condition variables could represent a series of opportunities and constraints to particular annexation pathways and strategies. As such, these variables should be clearly identified. Baseline conditions will be identified solely for the north and east portions of the SOI that are the subject of the feasibility analysis.

**Deliverables:** Maps of baseline environmental resources conditions. Electronic versions suitable for upload to the City’s website by City staff.

**Assumptions:** All baseline information can be derived from existing information sources. No new environmental resource analyses will be conducted. City staff will manage uploading project information to the City’s website unless otherwise requested by City staff.

### **Wastewater Collection and Treatment Facility Baseline Conditions and Annexation Alternatives Assessment Needs**

Stantec will conduct an extensive analysis of existing wastewater conveyance system conditions and wastewater treatment facility conditions. The primary purposes are to understand existing capacity, existing capacity commitments, and options and costs for improvements to both systems. Stantec’s full scope of work is included as [Attachment A](#). Stantec’s scope tasks 200 through 300 roughly correspond to analysis of existing conditions.

Stantec will also work with the EMC Planning Group Team and City staff to evaluate wastewater collection and wastewater treatment plant improvements, phasing, and costs associated with demand resulting from annexation alternatives to be defined by the Team. Stantec’s scope task 400 roughly corresponds to these analysis needs.

Stantec’s scope task 100 regarding project management and meetings are also folded into this overall project budget line item.

### **Economics/Market Conditions**

During this phase ADE will begin and complete its analyses regarding existing market conditions to project the short, medium and long-term development potential for each land use under consideration in the study area.

## **Task 4 Agency, Service Provider and Elected Official Meetings**

The EMC Planning Group staff will participate in up to four (4) meetings with Merced County LAFCO, Merced County, and priority responsible agencies and/or service providers. The goal is to scope out key issues and concerns of these agencies and to use that information

as an input to crafting an annexation implementation strategy. Meetings with LAFCO and the County will be particularly critical as they will likely have significant influence on how guidance for City consideration of annexation requests is developed. It is assumed that a meeting with City planning, public works, and administrators may be needed to articulate the City's position on alternatives to annexation, especially out-of-boundary service agreements.

Redsuit staff will also meet with elected officials at both the County and the City to provide briefings on issues, annexation concepts and direction and other matters as needed. The purpose is to ensure that the officials informed and given an opportunity to provide input in an informal manner.

Stantec staff will also conduct a series of meetings with agency staff as needed to collect information and discuss wastewater collection and wastewater treatment plant issues.

**Deliverables:** Four (4) agency meetings, meetings with decision makers and memoranda addressing key outcomes of each meeting.

**Assumptions:** City staff will be available to attend the for agency meetings to discuss the City's perspectives on agency interests as needed. A minimum of two agency meetings per day will be conducted to reduce travel and other costs.

## **Task 5 Community Engagement**

### **Task 5-1 Public Outreach/Education**

Immediately following the kick-off meeting with City staff, The Ingram Group, Redsuit and the EMC Planning Group Team will begin to implement the public outreach program. Tasks are summarized below.

- **Create Database of Stakeholders:** The EMC Planning Group Team will work with the City to identify stakeholders who have expressed interest in annexation. The Team will also work with the County to prepare a map and list of property owners within the study area and to prepare a list of registered voters in the study area. These will serve as the contact information for use in disseminating information to local stakeholders. Responsible and other interested agencies will be included in the database along with other contacts deemed important by City staff based on its prior experience.
- **Informational Handout:** An brief handout about the City's annexation feasibility study purpose and planning process for use in meetings and as general public information, and for placement in City information centers, libraries and other locations such as at the UC Administrative office, to interested organizations such as the Chamber, key community and service groups, etc.

## 2.0 Scope of Work

- **FAQ Sheet(s):** An expanded FAQ sheet will be prepared as the key educational tool for all stakeholders. It will include information on the annexation process, rights/standing of landowners/registered voters in that process, disposition of existing uses of their land, benefits of annexation in terms of access to urban services and facilities, continued operation of existing businesses, expectations/options for connecting to urban infrastructure and receiving urban services, costs to participate in transitioning into the city; etc. It will also request landowner/voter/process participant input on their interest in being annexed and on their opinions about annexation. The FAQ sheet may be modified up to two times over time as input is derived from recipients and to inform stakeholders of feasibility analysis progress, next steps, and/or events. Each FAQ sheet would be uploaded to the City's website by City staff.
- **Social Media Resources:** The initial handout and the FAQ sheet(s) will also serve as the basis of information to be placed on the City's website and Facebook page, both of which will include links to other pertinent information and studies referenced and prepared during the process. Our Team will collaborate with City and LAFCO staff in identifying other resources that may also be valuable for stakeholder reference. Our Team will monitor comments posted to or sent by stakeholders who utilize social media as a mechanism to participate in the process and inform the Team and City staff of stakeholder interests and issues to be considered in the feasibility study process. Responses to individual posts will not be provided, but rather "bundled" by issue to be reported back to City staff, the Team and decision makers.

The informational materials identified above will be developed in collaboration with City staff and refined based on staff understanding of political and social sensitivities and demographics.

**Deliverables:** One (1) copy of the initial stakeholder outreach database. One (1) electronic copy of the administrative draft handout. One (1) electronic copy of the final draft handout and one (1) electronic version suitable for upload to the City's website by City staff. One (1) electronic copy of each draft and final FAQ sheet.

**Assumptions:** The stakeholder list will be created once. No updates to the list are assumed unless specifically requested by individuals or organizations; no more than three hours are allocated to list updates. Outreach materials will be provided in English. Should the City desire materials also be provided in Spanish, this task can be added with a contract amendment. This proposal assumes that the City will print and distribute outreach materials. Alternatively, EMC Planning Group can complete the printing and distribution with a contact amendment.

## **Task 5-2 Workshops**

EMC Planning Group proposes to organize and conduct two (2) community workshops and one (1) joint Planning Commission/City Council workshop that will also be a forum for public input. A preliminary summary of the potential workshop purposes/content is shown below. The purpose and content is subject to change based on input from City staff and input gained from stakeholders and the public as the process unfolds.

- **Community Workshop #1:** General information workshop to be conducted early in the process to: explain the purpose and goals of the feasibility study, provide specific information on annexation procedures and requirements, identify opportunities for and the scope of stakeholder input, and field initial questions. Besides collecting input, this workshop will also set the stage for helping attendees effectively participate in subsequent process steps.
- **Community Workshop #2:** Review of information presented in workshop #1 followed by presentation of information developed to date with a focus on policy and regulatory opportunities and constraints, alternatives to traditional annexation and pros and cons, wastewater collection and wastewater treatment plant conditions, costs and benefits associated with annexation and annexation alternatives, mechanisms available for funding annexation/phased annexation, and general rights and obligations of landowners participating in annexation . Additional opportunity for input on issues discussed at the first two workshops.
- **Joint Planning Commission/City Council Workshop:** Overview of feasibility process to date including information presented at workshops #1 and #2; input received from landowners within annexation area; key variables in annexation pathway recommendations; preliminary proposed recommendations regarding annexation approach, annexation boundaries and phasing; infrastructure; utility and servicing requirements; and next steps for decision making and annexation process management. Discussion of framework policies for guiding annexation pathway as recommended.

**Deliverables:** Up to thirty (30) sets of workshop handouts including an agenda, PowerPoint presentation, and meeting summary (including key issues and recommendations) for each of the three (3) workshops.

**Assumptions:** City staff will be available to review presentation materials, coordinate venues, provide input regarding the approach to the workshops, and attend the meetings to provide expertise on City-related matters.

## **Task 5-3 Assessment Interviews**

The Ingram Group and Redsuit, in coordination with the EMC Planning Group, will prepare a questionnaire and conduct up to fifteen (15) stakeholder assessment interviews

## 2.0 Scope of Work

(landowners and developers) known to be interested in annexing to the city. The purpose is to assist in identifying interests, concerns, factors to be considered, and other pertinent information.

The questionnaire will be designed to elicit input that is consistent across subject areas and interviewees. The input to be targeted during these assessments will be differentiated from input solicited from other landowners/registered voters. Since these stakeholders are likely to be more development “savvy”, we expect to ask more concrete questions about their development interests, project concepts/plans, current/prior efforts to involve other landowners, “readiness” to submit annexation applications, understanding of regulatory permitting/entitlement requirements, and importantly, their willingness to participate in funding catalyst improvements such as wastewater collection and/or treatment infrastructure. To the extent possible, information will be mapped using GIS to assist with considering annexation pathway options.

**Deliverables:** One (1) electronic copy of the administrative draft survey questionnaire will be provided to City staff for comment; and one (1) electronic copy of the final draft survey questionnaire. GIS based mapping of key variables addressed in the stakeholder assessments. Memo of overall stakeholder assessment findings.

**Assumptions:** It is anticipated that no more than eight of the interviews will be conducted in person, and that these will be conducted over no more than a total of two days to minimize costs. The remainder would be conducted by phone.

### **Task 6 Annexation Alternatives Analysis**

EMC Planning Group will provide an analysis of the benefits and constraints of potential alternatives to annexation such as out-of-boundary service agreements, establishment of out-of-boundary service districts, etc. As a component of this analysis, the Team will evaluate general infrastructure needs and costs to service up to two annexation location/phasing options. ADE will play an important role in this analysis by addressing infrastructure and facility cost mechanisms that may be crucial to defining the implications of annexation alternatives. Stantec will also provide inputs related to wastewater infrastructure planning and costing variables.

Although this task follows the agency and service provider and community meetings, annexation alternatives is likely a topic that will come up at these meetings. Therefore, we anticipate that these concepts will be evaluated early so that during the meetings, we can manage expectations, if needed, that there actually may or may not be an option to “traditional” annexation.

**Deliverables:** An alternatives analysis memo will be prepared which contains summary findings regarding alternatives to annexation. The report will include text and maps.

One (1) electronic copy of the draft alternatives analysis will be provided to the City for comment; and up to twenty (20) hard copies of the final memo, and an electronic version suitable for upload to the City's website by City staff.

## **Task 7 Feasibility Report**

EMC Planning Group will prepare a formal analysis that includes findings and recommendations. The crux of the report will be an assessment of annexation pathway options that includes a recommendation for an option if one option is found to be superior. The analysis will be based on the input derived to date, plus critical input from ADE and Stantec regards feasible cost burdens for up to two annexation pathway options, with costing inputs provided by Stantec and other Team members. The report will include the following chapters:

- Introduction, purpose, and process;
- Baseline conditions with GIS maps and conclusions regarding regulatory, policy, natural resource, and infrastructure (with a substantial focus on wastewater collection and treatment infrastructure opportunities and constraints to annexation and development;
- Public Outreach Outcomes
  - Educational materials prepared for dissemination to landowners/voters ; FAQ sheets(s); summary of responses to FAQ sheet questions received from landowners/voters; and summary of information obtained from social media inquiries and comments;
  - Stakeholder Assessments: Educational materials used; assessment questionnaire; assessment results – trends, issues, and conclusions; and GIS maps to visually represent assessment outcomes (if deemed valuable based on inputs received); and
  - Public Workshops: Educational materials prepared; informational handouts prepared; PowerPoint presentations; summaries of input received; and trends/recommendations.
- As has been discussed, landowner/developer interest in being annexed and willingness to contribute funding up front to assemble and deliver a credible annexation application to the City (and to LAFCO) will be of prime outcome of the outreach process.
- Analysis of Annexation Alternatives  
Assessment of opportunities and constraints to annexation alternatives including out-of-boundary service agreements;

## 2.0 Scope of Work

- Evaluation of annexation funding options/willingness to pay by interested landowners and mechanisms for allocating costs among annexation beneficiaries;
- Analysis of annexation pathway options based on economic feasibility associated conceptual development scenario and infrastructure needs for each, policy considerations, entitlement pathway efficiency and opportunities, landowner and voter interests, etc.; and
- Recommendations and Policy Direction. The information presented in individual sections of the analysis will be synthesized to the extent possible in both graphic and text form. Ideally the information will point to a most logical path for one or a series of phased annexations. As has been noted previously, our Team will work with City staff to consider how variables and opportunities and constraints identified by stakeholders should be weighed as part of this synthesis process. Our goal is to present up to three annexation options – each with accompanying maps and discussion of pros and cons to each option. A preferred annexation/phasing option will be selected in collaboration with City staff. One or more options could include one or more alternatives to traditional annexation. This information would be the core of a presentation made to the Planning Commission and City Council during public hearings.

To specify how the preferred annexation option is to be implemented, our Team will prepare policy and action items that provide clear, discrete direction. The guidance must be precise and understandable for a broad range of stakeholders. The intent is to identify step-by-step procedures to be followed, information requirements to be included with annexation requests to the City (including reference to baseline opportunities and constraints and their effect on proposed land uses and development plans/site plans), funding and financial obligations and expectations (including options and recommendations for allocating costs among benefitting landowners/developers), environmental review requirements, standards for City staff review of applications, etc.

As an optional task, our Team can prepare a separate feasibility study product which serves as the “pocket guide” to the feasibility study. It would summarize the key findings and policy/action direction, and include one or two graphics to illustrate the preferred/adopted annexation pathway/phasing. The tool could be used to aid decision makers and as a communications tool by City staff in-lieu of stakeholders having to parse through the feasibility study for facts pertinent to their interests.

**Deliverables:** One (1) electronic copy of an administrative draft feasibility study and five (5) hardcopies; One (1) electronic copy of a draft feasibility study that incorporates staff

comments on the administrative draft and ten (10) hard copies, and one (1) electronic copy and twenty (20) hard copies of the final feasibility study.

**Assumptions:** The feasibility study will be a summary of information collected and reported in prior tasks. It is assumed that City staff will not request that new information be generated to support the study. New information can be generated, but a contract amendment may be required to do so. It is also assumed that additional iterations of the feasibility study will not be needed as a result of Planning Commission and/or City Council input on the results. If additional analysis or iterations are needed and requested from the EMC Planning Group Team, a contract amendment would be required.

## **Task 8 Feasibility Report Presentation/Representation**

The EMC Planning Group Team will take leadership in presenting the results of the feasibility study to decision makers and the public. We will also provide support to City staff in its preparation of public materials and feasibility study consideration package information (e.g. staff report, resolutions, etc.), as well as attend public hearings.

As noted, this task includes the following:

- Coordination and preparation of public hearing presentation materials;
- Assistance to City staff in preparing project consideration package materials. It is assumed that City staff will be drafting the project consideration materials, with the EMC Planning Group Team providing comments on minor content if requested;
- Attendance and presentations at up to two (2) Planning Commission public hearings; and
- Attendance and presentations at up to two (2) City Council hearings.

**Deliverables:** One (1) electronic copy each of draft and final Planning Commission and City Council PowerPoint presentations; one (1) electronic copy of draft and final maps (up to 3) for each hearing; up to a total of thirty (3) color hard copies of PowerPoint presentations; and up to a total of thirty (30) hard copies of each map prepared.

## **2.2 SCHEDULE**

We believe it is in the interest of all parties to complete the feasibility study as quickly as possible. City staff has suggested a target of six months maximum for completing the feasibility study, but that if an increment of additional time is needed to “get it right”, this may be acceptable. We will target a maximum of six months. If factors beyond our control may affect the schedule, these will be identified in coordination with City staff. The public hearing schedule is assumed to be in addition to the six month timeframe.

## 2.0 Scope of Work

A preliminary schedule is shown on the following page. It should be considered preliminary in that changes are possible in terms of the order of activities as information is developed by the team and acquired through public outreach, agency meetings, elected official meetings, landowner assessments, and City staff input.

## 2.3 PROJECT BUDGET

The project budget is shown below on the page following the preliminary schedule. The budget has been reviewed by City staff. A number of assumptions are made in the scope of work. If any of the assumptions do not hold, one or more contract amendments may be required.





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# ATTACHMENT A

STANTEC CONSULTING SCOPE OF WORK

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Reference: Proposal for Consulting Services in Support of the North Merced Annexation Feasibility Study

## Exhibit A

### Consulting Services in Support of the North Merced Annexation Feasibility Study

#### Scope of Services

The following Scope of Services is for Stantec to assist EMC Planning Group (EMC) and the City of Merced (City) with completion of the North Merced Annexation Feasibility Study (Feasibility Study). Budgets and deliverables are identified to be provided for each task.

#### **TASK 100 COORDINATION, MEETINGS, PROJECT MANAGEMENT AND QA/QC**

Stantec will provide project coordination, quality assurance and quality control of work deliverables, and maintain a schedule and budget to help ensure successful delivery of the Project.

#### **SUBTASK 100.001 - PROJECT COORDINATION, PROJECT MANAGEMENT AND QA/QC**

Stantec will provide supervision and coordination with our staff and overall coordination of the multiple project activities. Stantec will prepare a Project Implementation Plan outlining the project objectives, deliverables, and work breakdown structure.

Stantec will also provide quality assurance and quality control for our work efforts, including peer review of project deliverables. Documents will be reviewed for correctness, completeness, and coordination with other documents and between disciplines.

#### **SUBTASK 100.002 - PROJECT KICKOFF MEETINGS**

Stantec will participate in an internal project team kickoff meeting with EMC staff to review and coordinate regarding implementation of this scope of work. Stantec will also participate in a kickoff meeting with EMC and City staff as an initial work task. It is assumed these meetings will be conducted as conference calls.

**Deliverable:** Participation in two (2) conference calls.

#### **SUBTASK 100.003 – PROJECT MEETINGS**

Stantec will participated in up to six (6) project team status/deliverable review meetings to be scheduled and led by EMC. These meetings are assumed to involve EMC's team members, not necessarily City staff, and to be conducted via conference call.

**Deliverables:** Participation in six (6) status/deliverable review conference calls.

#### **SUBTASK 100.004 – STAKEHOLDER MEETINGS**

Stantec will participate in up to two (2) stakeholder meetings to be held on location at the City of Merced municipal building, or other location assumed to be somewhere within the SUDP defined in the City's Vision 2030 General Plan.

**Deliverables:** Participation in two (2) stakeholder meetings.

#### **SUBTASK 100.005 – PUBLIC AND CITY COUNCIL MEETINGS**

Stantec will attend one (1) City Council or public meeting (as determined in consultation with City and EMC staff, if needed). Stantec will contribute presentation materials for this meeting at the direction of EMC and City staff.

**Deliverables:** Presentation slides in MS PowerPoint format.

#### **SUBTASK 100.006 – MONITOR PROJECT BUDGET AND DELIVERABLES SCHEDULE**

Stantec will monitor the project budget and deliverables schedule and prepare a Monthly Task Summary Report to accompany the invoice for the previous month's work. The status report will review major work activities completed and budget expended.

**Deliverables:** Monthly Task Summary Report.

### **TASK 200 SUPPORT ASSESSMENT OF PROPERTY OWNER PURCHASE OF EXISTING COLLECTION SYSTEM AND WWTRF FACILITY CAPACITY**

#### **SUBTASK 200.001 PROVIDE GIS MAPPING USED FOR ASSESSMENT DISTRICT DELINEATION TO DATE**

Stantec has initiated work to identify the parcels which will benefit from construction of collection system improvements based on criteria provided by the City and as identified in the Final Draft Wastewater Collection System Master Plan (December 2017, Stantec – aka, the December 2017 WCS Master Plan). Stantec will share the GIS data developed in collaboration with City Public Works staff. Stantec will also interact with EMC and City staff to refine this information as necessary to overlay those parcels which the City believes will benefit from construction of additional capacity at the WWTRF.

Stantec assumes our role will be in support of EMC as they work with City staff to confirm which properties have purchased capacity in the existing collection system and identify those which have similarly purchased capacity at the WWTRF. Stantec has not previously considered purchase of WWTRF capacity in development of GIS mapping details for the proposed collection system Assessment District.

**Deliverables:** GIS data developed to date for properties benefiting from collection system improvements in the December 2017 WCS Master Plan. GIS data modification to incorporate a layer for properties which will benefit from future WWTRF improvements.

### **TASK 300 ASSESS CAPACITY AVAILABLE AND NEEDED AT THE WWTRF**

Stantec recently completed a capacity assessment for the City, under separate contract. The results of that assessment will be summarized and provided to EMC. In addition, based on the outcome of Task 200, Stantec will assist EMC and the City in determining how much capacity is required to serve existing commitments to properties which have "purchased capacity" at the WWTRF. Stantec will also work with EMC and the City to determine an appropriate WWTRF capacity expansion increment to serve initial development of properties within the North Merced Annexation Study service area.

#### **SUBTASK 300.001 – EXISTING WWTRF CAPACITY ASSESSMENT**

Stantec will provide EMC the technical memorandum/report recently developed for the City, which summarizes the methodology and results of an assessment of capacity remaining in the

WWTRF. We will also provide text and figures for inclusion in stakeholder outreach materials to be developed by EMC. Specific text and figures have not been defined at this time, therefore our Fee Estimate (Attachment B) includes an allowance for this effort, which can be modified as appropriate after negotiation between EMC and Stantec, and as approved by the City.

**Deliverables:**

- Provide recent technical memorandum/report on remaining WWTRF capacity.
- Provide text and figures to EMC for inclusion in stakeholder outreach materials which summarize the remaining capacity at the existing WWTRF.

**SUBTASK 300.002 – CAPACITY NEEDED TO SERVE WWTRF COMMITMENTS**

Based on the results of the property evaluation undertaken by the City, and described in Task 200, Stantec will prepare a brief memo summarizing a comparison of the remaining capacity at the WWTRF and the capacity estimated to be required to serve properties which have “purchased capacity” at the WWTRF.

**Deliverable:**

- Draft capacity needs memorandum.
- Final capacity needs memorandum.

**SUBTASK 300.003 – ASSESS CAPACITY NEEDS AT WWTRF AND SUGGEST NEXT INCREMENT OF EXPANSION**

Stantec will evaluate the results of Task 300.002 and input provide by EMC and City staff on the expected demand for WWTRF capacity, expressed by stakeholders as interest in moving forward with development over the next 5 to 7 years. This interest, combined with capacity needs identified in task 300.002 will be used to develop a suggested facility expansion increment for the WWTRF, including a summary of likely process components requiring expansion and associated opinions of probable cost. Stantec will provide a possible timetable for additional capacity associated with this incremental expansion, including needs for NPDES permit and reclamation order modification, detailed planning and design, as well as construction and start-up.

As part of this task, Stantec will also develop planning level costs for the improvements. We will then use these costs to estimate the per EDU cost for new development that would benefit from this additional capacity.

**Deliverable:**

- Draft expansion increment memorandum.
- Final expansion increment memorandum.

**TASK 400 – POSSIBLE SYSTEM PHASING**

The December 2017 WCS Master Plan, together with the results and suggestions contained in the preceding tasks 200 through 300, will be used as the basis for Stantec to evaluate and suggest possible phasing options for development of City wastewater infrastructure improvements. In addition, Stantec will accept input gathered by EMC from stakeholder engagement activities, which may include alternative means for phasing either collection system or WWTRF improvements, or both.

#### **SUBTASK 400.001 – POSSIBLE SYSTEM PHASING OPTIONS**

Stantec will consider up to three (3) phasing options for the wastewater collection system improvements described in the December 2017 WCS Master Plan and up to two (2) options for phasing of WWTRF improvements. Scoping of the phasing options to be considered will be conducted in collaboration with EMC and City staff. It is anticipated the options to be considered may be developed in concert with the stakeholder group.

Stantec will conduct an evaluation of these phasing options and summarize them in a technical memorandum/report.

##### **Deliverables:**

- Draft phasing options TM/report.
- Final phasing options TM/report.

#### **SUBTASK 400.002 – PHASING OPTIONS SCHEDULE AND COST ANALYSIS**

Stantec will further support the assessment of phasing options by providing an estimated schedule and cost associated with each. These estimates will be summarized in a brief memorandum, which may be combined with the TM/report to be delivered with Subtask 400.001.

##### **Deliverables:**

- Draft phasing options schedule and cost analysis memorandum.
- Final phasing options schedule and cost analysis memorandum.

#### **SUBTASK 400.003 – PREFERRED PHASING OPTION**

Stantec will work with EMC, City staff and the stakeholders to identify a preferred phasing approach based on the results of Subtasks 400.001 and 400.002. This preferred approach will be summarized in a brief memorandum. It is possible that this phasing memorandum may be a summary of phasing options acceptable to City staff with final options selected as part of stakeholder project approvals.

##### **Deliverables:**

- Draft preferred phasing option memorandum.
- Final preferred phasing option memorandum.

#### **OPTIONAL TASKS**

The tasks presented below may offer value to the City and stakeholders and could be implemented concurrently with the scoped tasks above, or subsequently. They may also be best authorized separately, direct with the City as standalone studies/designs.

#### **TASK 500 – OPTIONAL – PRELIMINARY DESIGN OF TRUNK SEWER IMPROVEMENTS**

To refine cost estimates and schedules and advance project development, Stantec can complete a preliminary design of the proposed sewer trunk improvements described in the December 2017 WCS Master Plan. This task is included as optional effort to ensure City staff and stakeholders of the possible benefit of developing additional detail regarding the proposed trunk sewer facilities. Existing estimates and those to be developed in the preceding tasks will only be developed to the planning level with limited detail. Completing a preliminary design will provide

a greater level of project detail and associated certainty with respect to cost and schedule estimates. No fee estimate is provided with this optional task. Stantec can provide a more detailed scope and fee separately for this effort, when desired.

#### **TASK 600 – OPTIONAL – IMPROVE CONFIDENCE IN WCS MODEL OUTPUTS**

Stantec can provide further analysis of the proposed sewer trunk improvements described in the December 2017 WCS Master Plan. This task is included as an optional effort to ensure City staff and stakeholders of the possible benefit of further evaluation of the hydraulic model used to assess existing and size proposed future trunk sewer facilities. In particular, the model was last calibrated in 2006, prior to significant drought periods and more recent, apparent changes in water usage patterns within the City identified during the recent WWTRF capacity evaluation undertaken by Stantec. This could result in changes to the recommended sewer trunk improvements. While the hydraulic analysis completed for the December 2017 WCS Master Plan was sufficient for that high-level planning study, it is possible that additional flow monitoring to assess current generation, including I/I response exhibited by the system, will support the following possible benefits:

- 1) reduce uncertainty associated with the current model of the system by providing data on actual system response during wet weather conditions and assess dry weather flow contributions from existing sewer sheds, and
- 2) determine that WCS model assumptions utilized to date are either less conservative, overly conservative, or adequate, resulting in the possibility that some WCS facilities contain more or less capacity than previously estimated, and
- 3) some proposed WCS facilities may be over, or undersized based on the analysis to date.

No fee estimate is provided with this optional task. Stantec can provide a more detailed scope and fee separately for this effort, when desired.

#### **TASK 700 – OPTIONAL – REVISE/UPDATE WCS AND WWTRF IMPROVEMENT RECOMMENDATIONS BASED ON ALL AVAILABLE INFORMATION**

Stantec can refine and modify, as appropriate, recommendations on WCS and WWTRF facility improvements recommended to date as the result of foregoing Tasks 200 through 600, above. No fee estimate is provided with this optional task. Stantec can provide a more detailed scope and fee separately for this effort, when desired.

#### **BUDGET ESTIMATE**

The total budget estimate for the above scope of services is \$103,000. A breakdown of the estimated labor hours and budget by task is shown on Attachment B. This scope (and fee) is our best assessment of the services required. It may or may not be sufficient depending on the number of iterations or level of detail the stakeholders request for decision making. Stantec is happy to amend or change this scope and fee to suit the project needs as the work and outreach process proceed.

This scope does not include a contingency.

Exhibit B

Fee Estimate for Consulting Services in Support of the North Merced Annexation Feasibility Study

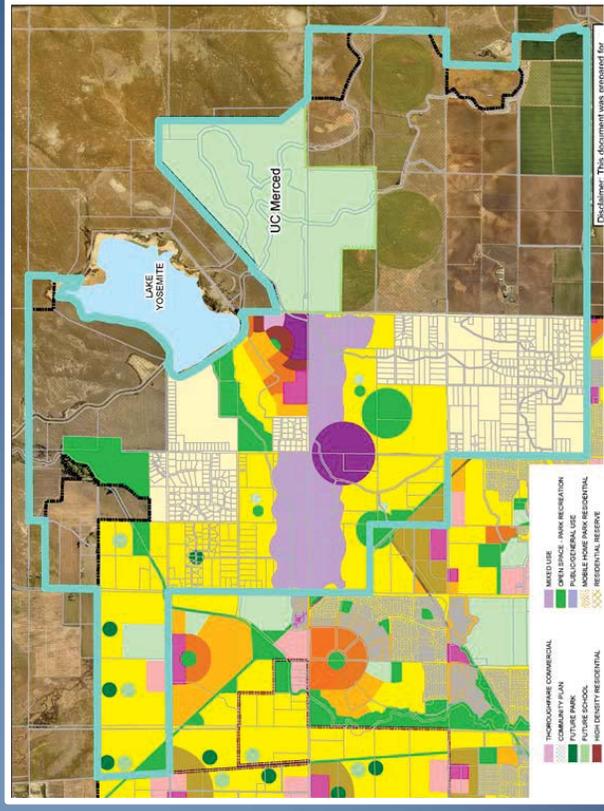
	Principal in Charge	Project Manager / Sr. WWTRF Process Engineer	Sr. Public Finance Consultant	Senior Engineer	Associate Civil Engineer	Project Engineer, Public Finance Specialist	Graphics Specialist	Administrative Assistant	TOTAL HOURS	TOTAL STANTEC LABOR	Direct Costs / Materials / Subs	TOTAL
<b>Task 100 - COORDINATION, MEETINGS, PROJECT MANAGEMENT, AND QA/QC</b>												
100.001   Project Coordination, Project Management and QA/QC	4	16						12	32	\$6,144		\$6,144
100.002   Project Kickoff Meetings (1 Internal, 1 written)	4	8	4		4	4			24	\$4,944	\$200	\$5,144
100.003   Project Meetings (up to six (6) conference calls)	4	10	4		4	4		4	26	\$5,412	\$200	\$5,612
100.004   Stakeholder Meetings (up to 2)	4	20	8		4	4	4	4	48	\$9,648	\$750	\$10,398
100.005   Public and City Council Meetings (up to 1 meeting)	4	12	4	2	4	4		2	36	\$7,092	\$750	\$7,842
100.006   Monitor Project Budget and Deliverables Schedule		8						8	16	\$2,840		\$2,840
<b>Task 200 - SUPPORT ASSESSMENT OF PROPERTY OWNER BUY-IN TO EXISTING COLLECTION SYSTEM AND WWTRF FACILITY CAPACITY</b>												
200.001   Provide GIS Mapping Used for Assessment/District/Delineation to Date		1		2	2				7	\$1,276		\$1,276
<b>Task 300 - ASSESS CAPACITY AVAILABLE AND NEEDED AT WWTRF</b>												
300.001   Existing WWTRF Capacity Assessment	2	4		8				2	16	\$3,280		\$3,280
300.002   Capacity Needed to Serve WWTRF Commitments	2	16	2	12	12	6	4	2	56	\$10,790		\$10,790
300.003   Assess Capacity Needs at WWTRF and Suggest Next Increment of Expansion	4	20	2	20	12	6	4	2	70	\$13,808		\$13,808
<b>Task 400 - POSSIBLE SYSTEM PHASING</b>												
400.001   Possible System Phasing Options	4	20	2	20	24	6	8		84	\$16,150		\$16,150
400.002   Phasing Options Schedule and Cost Analysis	2	8	2	12	8	6	4	2	44	\$8,246		\$8,246
400.003   Preferred Phasing Option	2	12	2	16	12	6	8	4	62	\$11,468		\$11,468
<b>TOTAL COSTS (ROUNDED)</b>	<b>36</b>	<b>159</b>	<b>38</b>	<b>92</b>	<b>48</b>	<b>36</b>	<b>36</b>	<b>52</b>	<b>527</b>	<b>\$109,570</b>	<b>\$1</b>	<b>\$109,571</b>

Notes:

1. Work efforts are based on the description of tasks provided in the proposed scope of services, Exhibit A.
2. Work efforts do not include contingency, new authorization will be required for new or changed scope conditions.



# NORTH MERCED ANNEXATION FEASIBILITY STUDY



CITY COUNCIL MEETING—MARCH 4, 2019

KIM ESPINOSA, PLANNING MANAGER

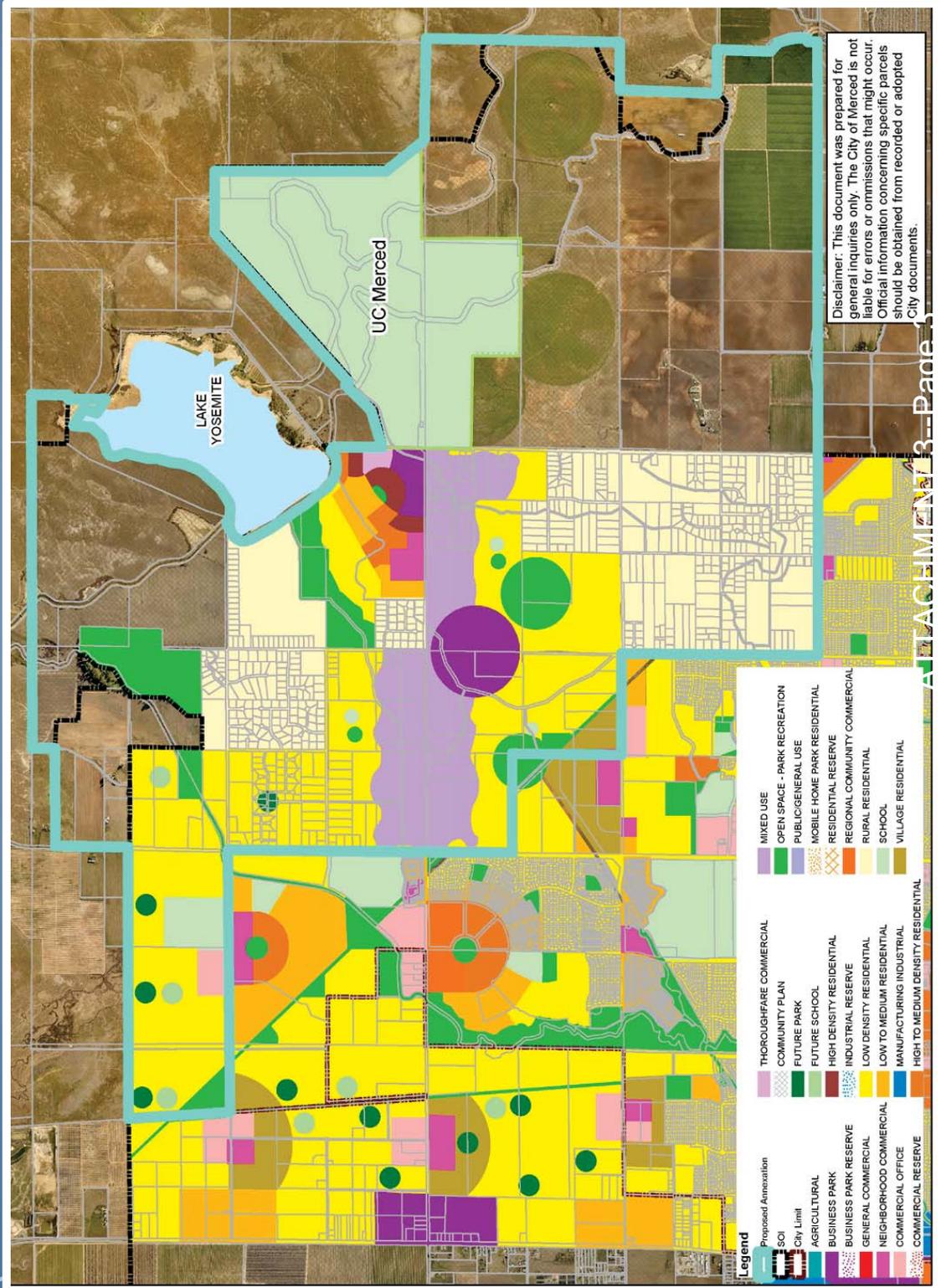
ATTACHMENT 3--Page 1

## NORTH MERCED ANNEXATION STUDY AREA

- Approximately **7,600 acres** within the City's Sphere of Influence
- Generally located east of G Street and north of Yosemite Avenue
- Approximately **700** separate parcels and over **600** property owners
- Approximately **10 to 15** property owners who control large areas of over **100 acres** or more

ATTACHMENT 3--Page 2

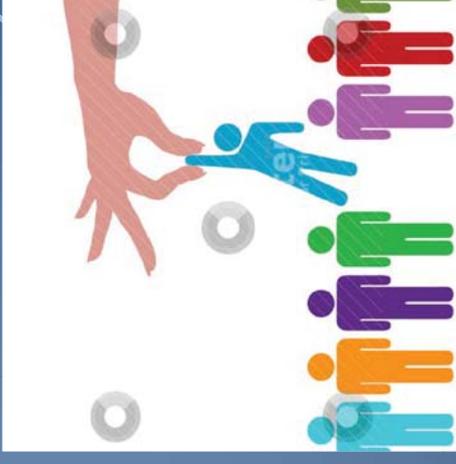
# NORTH MERCED ANNEXATION STUDY AREA



ATTACHMENT 3--Page 1

# CONSULTANT SELECTION PROCESS

- August 27, 2018--Request for Proposals (RFP) Released
- October 4, 2018—Proposals Due.
  - 2 Proposals Received
    - EMC Planning Group
    - Quad-Knopf
- November 15, 2018--Consultant Teams Made Presentations to the group of North Merced stakeholders and were also interviewed separately by City staff and Merced LAFCO Executive Director Bill Nicholson.
- The Feedback from the Stakeholders and the Consensus of City and LAFCO staff was strongly in favor of EMC Planning Group based on their Proposed Consultant team, Experience with Similar Projects, and their Comprehensive Approach to the Process.



# PROPOSED SCOPE OF WORK



- *Project Management and Project Kickoff Meeting (Tasks 1 and 2).*
- *Baseline Conditions (Task 3)*
- *Agency, Service Provider, and Elected Official Meetings (Task 4): Up to 4 Meetings with Merced County LAFCO, Merced County, including briefings with City and County Elected Officials.*
- *Community Engagement (Task 5), including:*
  - *Public Outreach/Education: Database of stakeholders, Informational Handout and FAQ Sheets; and Social Media Resources.*
  - *Workshops: 2 Community Workshops and 1 Joint Planning Commission/City Council Study Session at various points to gather Input from Stakeholders and Public.*
  - *Assessment Interviews: Questionnaire and up to 15 Stakeholder Assessment interviews to be conducted both in Person and over the Phone.*

ATTACHMENT 3--Page 5

# PROPOSED SCOPE OF WORK (CONT.)

- *Annexation Alternatives Analysis (Task 6):* Analysis of the Benefits and Constraints of Potential Alternatives to Annexation, such as out of boundary service agreements, establishment of out of boundary service districts, etc.
- *Feasibility Report (Task 7):* Formal Analysis, including Findings and Recommendations, including Annexation Pathway Options, based on economic feasibility, available infrastructure, landowner and voter interests, development scenarios, etc.
- *Feasibility Report Presentation (Task 8):* EMC will take the lead in presenting the final study to up to 2 Planning Commission and 2 City Council public hearings.

**The anticipated time frame to complete the above work (except the public hearings) would be approximately 6 months or by September 2019.**

# FUNDING SOURCES

- Reimbursement Agreements with Property Owners Infeasible.
- A Number of Property Owners NOT Willing to Participate
- Issue of Fairness
- Funding:
  - Supplemental Appropriation of \$220,136 in Fund 017-Development Services from the current Fund Balance.
  - \$100,000 from Planning Division's Professional Services account
  - \$103,000 from Wastewater Fund 551 "Projects to be Determined."
- Reimbursement Fee to be charged to future Applicants for Annexation within Study Area.
  - Based on the final cost of the study (\$423,136) and the 7,668-acre Study Area, the fee will generally be approximately \$55.18 per acre.
  - Add Administrative costs and annual adjustments based on inflation
  - Public hearings and nexus findings **ATTACHMENT 3--Page 7**

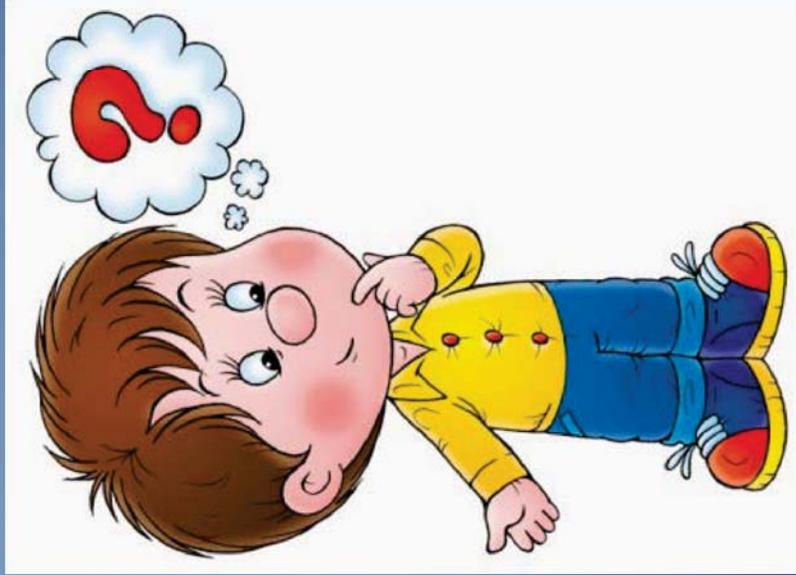


# RECOMMENDATION

- Approve the Professional Services Agreement with EMC Planning Group in the amount of \$423,136; and,
- Associated Budget Adjustments, and,
- Direct staff to develop a Reimbursement Fee to cover the cost of the Study to be charged to Future Annexation Applicants within the Study Area.



# QUESTIONS?



ATTACHMENT 3--Page 9



## ADMINISTRATIVE REPORT

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**Agenda Item K.2.**

Meeting Date: 3/4/2019

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*Report Prepared by: Janet German, Secretary III, Fire Dept.*

**SUBJECT: Report - Update on Emergency Medical Service (EMS) and Direction on Next Steps to Evaluate the Potential of Implementing Various Levels of Advanced Life Support within the City of Merced**

### **REPORT IN BRIEF**

Provide City Council with an update on Emergency Medical Services (EMS) and obtain direction on next steps in evaluating the potential of implementing various levels of Advanced Life Support within the City of Merced.

### **RECOMMENDATION**

Provide staff direction on next steps related to Advance Life Support implementation.

### **CITY COUNCIL PRIORITIES**

This action is consistent with the city's operating principal to promote Public Safety.

### **DISCUSSION**

The future of the fire service is being driven by changes in society. These changes include new expectations of our stakeholders and fire personnel such as greater accountability for the use of public resources and improving the overall efficiency of programs and services. To continue to be ever vigilant, the Merced Fire Department has prepared a presentation to review its current Emergency Medical Services (EMS) mission against its current demands.

In 2018, the City of Merced Fire Department responded to over 9,600 calls for service. 6,122 of those calls were directly associated to an EMS type of incident or 64% of our total call volume. Over 54% of the time, the MFD arrives at scene before the ambulance company and has the ability to administer emergency medical services in hopes of a positive patient outcome.

As fire departments throughout the United States evaluate their current EMS delivery models, many of them focus exclusively on transportation of the patient and the associated issues with patient off load times and other challenges beyond the fire departments control. The MFD is currently focused around analyzing how increasing the level of EMS service and providing rapid medical intervention will increase patient outcomes.

While there are many benefits to increasing the level of service provided by the fire department to our

community, there are also fiscal challenges/impacts associated with an increase in care. The MFD seeks City Council's direction as to further evaluation and potential next steps in the implementation of expanding the current EMS service delivery model.

**ATTACHMENTS**

1. Advanced Life Support Slideshow Presentation



# City of Merced Fire Department

ADVANCED LIFE SUPPORT PROGRAM

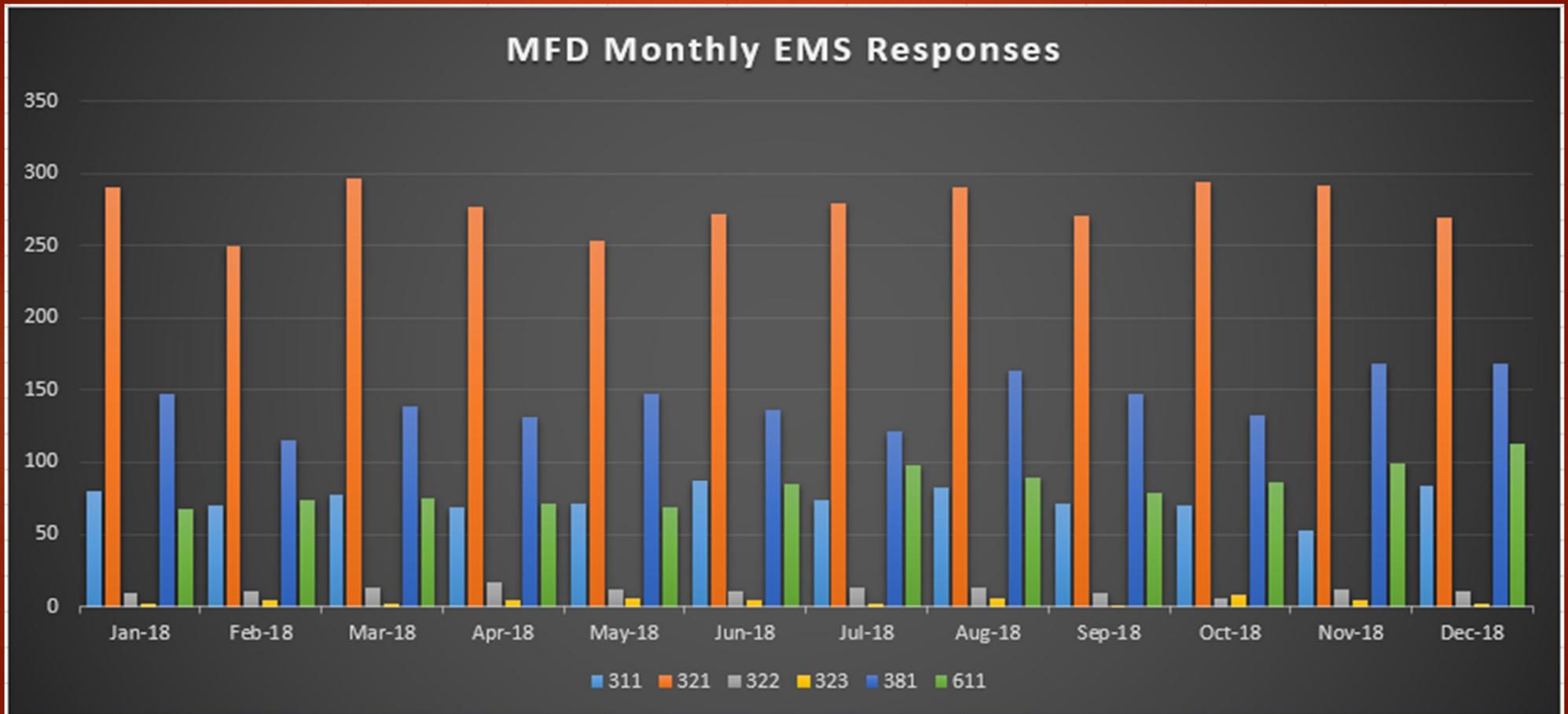
# Update on Current Services

- ▶ Merced County is an Exclusive Operating Area for ambulance service.
- ▶ Service provided by Riggs Ambulance since 1948.
- ▶ Current 911 ambulance contract set to expire Dec 2019.
- ▶ 911 ambulance RFP process currently in progress.
- ▶ MCEMSA hired PWW to perform EMS system evaluation 2016.
- ▶ EMS system failure experienced June 2017-May 2018.
- ▶ Tiered Response implemented by ambulance company in June 2018.

# Current BLS Performance

Inc Code	311	321	322	323	381	611	Total	Daily Avg.
Jan-18	80	290	9	2	148	67	596	19
Feb-18	70	250	11	4	115	74	524	19
Mar-18	77	297	13	2	139	75	603	19
Apr-18	69	277	17	4	131	71	569	19
May-18	71	253	12	6	148	68	558	18
Jun-18	87	272	11	4	136	85	595	20
Jul-18	74	279	13	2	122	98	588	19
Aug-18	82	291	13	6	164	89	645	21
Sep-18	71	271	9	1	147	78	577	19
Oct-18	70	294	6	8	133	86	597	19
Nov-18	53	292	12	4	168	99	628	21
Dec-18	83	269	10	2	168	113	645	21
Daily Avg.	2.4	9.1	0.4	0.1	4.7	2.7	19.5	
Total	887	3335	136	45	1719	1003	7125	
				4403	6122			
	Patient Care Percentage			72%				
	MFD First On Scene			54%				

# Current BLS Performance



# Limited ALS - Advanced EMT

- ▶ An Advanced EMT is a currently certified EMT who receives additional training to provide/administer certain ALS interventions including:
  - ▶ Non-invasive advanced airway maintenance.
  - ▶ Initiate IV therapy.
    - ▶ Administer Dextrose and Naloxone via IV
  - ▶ Administer aspirin and Nitroglycerine to chest pain patients.
  - ▶ Administer nebulized bronchodilators to asthma patients.
  - ▶ Administer activated charcoal to overdose patients.
  - ▶ Administer epinephrine to allergic reaction patients.

# What is ALS

- ▶ “Advanced Life Support” or ALS means any definitive prehospital emergency medical care including:
  - ▶ ECG/12 lead interpretation
  - ▶ Medication administration (25 medications) and treat conditions
- ▶ Reinforced disaster response capability.
- ▶ Increased system surge capacity.
- ▶ Expedited delivery of care on multi-patient incidents.
- ▶ Ability to address repeat system utilizers through prevention interactions.
- ▶ Ability to affect Ambulance Patient Offload Times through assessment and triage of patients prior to ambulance arrival.
- ▶ Provide immediate assessment and intervention for responders on scene of an emergency.

# ALS Program Implementation

- ▶ Tier 1: Limited ALS Response Program

Allows currently licensed Paramedics to provide Advanced Life Support when on duty. Requires:

- ▶ Program Approval from LEMSA
- ▶ Contract with Medical Director (partnership with hospital/ambulance provider)
- ▶ Equipment/Supply Acquisition
- ▶ ePCR Program Acquisition
- ▶ CE/Training

Tier 1 status is achievable within current approved budget.

# ALS Program Implementation Cont.

- ▶ Tier 2: Enhanced ALS Alternative Response Program

Consists of 1-2 Full-time ALS apparatus

Requires:

- ▶ Additional Licensed Personnel (4-8 Paramedics)
- ▶ Equipment/Supply Acquisition
- ▶ Overhead Need- Implementation of a 24/7 ALS program consisting of 1-2 ALS Apparatus will require addition of (1) Full-Time EMS Coordinator for daily Administrative oversight (Narcotics tracking, COI, Mandated Statistical Reporting, Continuing Education, etc.) as outlined in State, Local regulations.

# ALS Program Implementation Cont.

## ▶ Tier 3: Full ALS First Response Program

Consists of All ALS Apparatus (Paramedic on every piece of equipment)

Requires:

- ▶ Additional Licensed Personnel (18 Paramedics)
- ▶ Equipment/Supply Acquisition
- ▶ CE/Training
- ▶ Overhead Need- Implementation of a 24/7 ALS program in which all apparatus are ALS equipped will require the development of an EMS Division consisting of (1) Full-Time EMS Program Manager, and (1) Full-Time EMS Coordinator for daily Administrative oversight (Narcotics tracking, CQI, Mandated Statistical Reporting, Continuing Education, etc.) as outlined in State, Local regulations.

# Financial Implications

Costs associated with expansion of service vary with the size and scope of service.

- ▶ Both programs require:
  - ▶ purchase of various medical equipment, disposable medical supplies
  - ▶ Additional administrative oversight
- ▶ Both programs will result in additional training costs.
- ▶ Members receiving certification in each of these programs will likely request incentive pay for performing higher level of services.

# Overcoming Financial Implications

- ▶ Costs associated with EMS response may be offset with First Responder reimbursement
- ▶ Grant funding opportunities exist for equipment acquisition and training
- ▶ Revenue sharing agreements with contracted transport provider
- ▶ Ability to generate event “stand-by” revenues
- ▶ Revenue streams for “treat and release” interactions are evolving with changes in healthcare

# Next Steps

Seeking direction on level of service expected from the Fire Department.

- 1) Maintain current level of service (Basic Life Support)
- 2) Explore expansion of service to include Limited ALS with EMT Advanced personnel
- 3) Explore expansion of service to include ALS with Paramedic personnel
- 4) - Or -
- 5) Explore expansion of service with a combination of both



## ADMINISTRATIVE REPORT

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**Agenda Item L.1.**

Meeting Date: 3/4/2019

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*Report Prepared by: Stephanie Dietz, Assistant City Manager*

**SUBJECT:** Council to Set FY 2019/20 Goals and Priorities

### REPORT IN BRIEF

Staff will provide an update on FY 2018/19 Goals and Priorities and present summary of recent Town Hall discussion topics. Council will have an opportunity to provide input on setting Goals & Priorities for FY 2019/20.

### RECOMMENDATION

Provide staff direction on Goals and Priorities for FY 2019/20.

### DISCUSSION

On February 26<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> the City Council held Town Hall meetings in Central, North and South Merced to hear from the residents of Merced on outstanding issues and areas for investment for development of the FY 2019/20 Budget. Staff will be providing a summary of the comments received from these meetings and also provide an update on the FY 2018/19 Goals & Priorities. At the end of the presentation, the City Council will have an opportunity to provide input on FY 2019/20 Goals & Priorities to guide Budget development.

Due to the timing of Town Hall meetings, the presentation will be provided on Monday, March 4, 2019 both electronically and in paper form at the meeting.