

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

Tuesday, September 3, 2019

6:00 PM

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

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 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.	<u>19-524</u>	SUBJECT: CONFERENCE WITH REAL PROPERTY NEGOTIATORS -
		Property: APN 059-240-081; Agency Negotiator: Frank Quintero,
		Director, Economic Development; Negotiating Parties: Mark Persico,
		Merced Designated Local Authority and City of Merced and; Under
		Negotiation: Price and Terms of Payment
B.2.	<u>19-518</u>	SUBJECT: CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant Exposure to Litigation pursuant to Government

Code section 54956.9(d)(2): (1) case

C. CALL TO ORDER

- C.1. Invocation Al Schaap, Gateway Church
- 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. WRITTEN PETITIONS AND COMMUNICATIONS

G. 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.

H. 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.

H.1. 19-201 **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.

H.2. 19-458 **SUBJECT:** Information-Only Contracts for the Month of August 2019

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$32,000 and of Public Works contracts under \$70,939.

H.3. 19-514 **SUBJECT:** Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of August 5, 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 August 5, 2019.

H.4. 19-511 **SUBJECT:** Approval of a Three (3) Year Lease Agreement with James G. Moulton, Trustee, and Lynda S. Moulton, Trustee, for a 9,000 Square Foot Facility with Initial Base Rent of \$5,475/NNN Per Month and the Option to Extend for an Additional Three (3) Years

REPORT IN BRIEF

Considers approving a three-year lease agreement with James G. Moulton and Lynda S. Moulton for property to be utilized by the Merced Police Department.

RECOMMENDATION

City Council - Adopt a motion approving the lease agreement between the City of Merced and James G. Moulton, Trustee, and Lynda S. Moulton, Trustee and authorizing the City Manager, the Assistant City Manager, or the Finance Office to make necessary adjustments and execute the document.

H.5. 19-402 **SUBJECT:** Adoption of Resolution Extending the Participation in the Abandoned Vehicle Abatement Program (AVA) with Merced County Association of Governments (MCAG) for the Period of August 1, 2020 Through July 31, 2030

REPORT IN BRIEF

Considers approving a resolution between the Merced County Association of Governments (MCAG) and the City of Merced to continue to participate in the Abandoned Vehicle Abatement program (AVA) for an additional 10 year period. (See attachment 1)

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving **Resolution 2019-45**, a Resolution of the City Council of the City of Merced, California, establishing service authority for abandoned vehicle abatement; and,
- B. Authorizing the City Manager or the Assistant City Manager to execute the agreement; and,
- C. Authorizing the Finance Officer to make the appropriate budget adjustments.

H.6. 19-486

SUBJECT: Approval of a Pooled Cash Loan Not to Exceed \$7,720,000
and Current Year Payment Amount, in Order to Repay the Department
of Finance (DOF) Based on the Approved Settlement Agreement
Related to the Dissolution of the City of Merced Redevelopment
Agency

REPORT IN BRIEF

Considers approving a pooled cash loan not to exceed \$7,720,000 and current year payment amounts in order to repay the Department of Finance based on the approved Settlement Agreement related to the dissolution of the City of Merced Redevelopment Agency.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving a pooled cash loan not to exceed \$7,720,000; and,
- B. Approving the use of RDA residual in the amount of \$1,297,953 plus interest towards the first payment; and,
- C. Approving the use of \$500,000 from Fund 017 Development Services towards the first payment; and,
- D. Authorizing the City Manager or the Assistant City Manager to the execute all necessary documents; and,

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

H.7. 19-505

SUBJECT: Authorization to Submit a Formal Letter of Intent to

Purchase for the Property Located at the Corner of Childs Avenue and

B Street from the County of Merced for the Childs Court Apartments

REPORT IN BRIEF

Considers approving the formal letter of intent to purchase the property located at the corner of Childs Avenue and B Street from the County of Merced to support the Childs Court Apartment development.

RECOMMENDATION

City Council - Adopt a motion authorizing the City Manager or the Assistant City Manager to sign the formal "Notice of Intent" letter to purchase the property located at 1137 B Street from the County of Merced.

H.8. 19-435

SUBJECT: Adoption of Resolution Recognizing the Importance of the 2020 Census and Ensuring a Complete, Fair, and Accurate Count of all Californians

REPORT IN BRIEF

The City Council of the City of Merced is asked to recognize the importance of the 2020 U.S. Census and support helping to ensure a complete, fair, and accurate count of all Californians.

RECOMMENDATION

City Council - Adopt a motion adopting **Resolution 2019-53**, a Resolution of the City Council of the City of Merced, California, recognizing the importance of the 2020 Census and supporting the efforts to help ensure a complete, fair, and accurate count of all Californians.

H.9. 19-478

SUBJECT: Adoption of Resolution Declaring the Intent to Abandon a
Sewer Easement and Working Easement at 3600 G Street, Generally
Located on the Northeast Corner of G Street and Yosemite Avenue,
and Setting a Public Hearing for October 7, 2019 (Vacation #19-04)

REPORT IN BRIEF

Considers the abandonment of an old sewer easement and working easement at 3600 G Street.

RECOMMENDATION

City Council - Adopt a motion adopting **Resolution 2019-55**, a Resolution of the City Council of the City of Merced, California, declaring its intention to vacate a sewer easement and working easement at 3600 G Street, generally located on the northeast corner of G Street and Yosemite Avenue (Vacation #19-04) and setting time and place for Public Hearing.

H.10. 19-509

SUBJECT: Adoption of Resolution Approving the Cypress Terrace 6,
Phase A - Final Map 5366 for 18 Single-Family Lots, Generally
Located on the West Side of N Street, North of Gerard Avenue, and
the Approval of the Subdivision Agreement for Cypress Terrace 6,
Phase A

REPORT IN BRIEF

Considers the approval of Final Map #5366 for 18 single-family lots, generally located on the west side of N Street (extended), north of Gerard Avenue (extended), and the Subdivision Agreement for Cypress Terrace 6, Phase A.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving **Resolution 2019-57**, a Resolution of the City Council of the City of Merced, California, approving the final subdivision map for the Cypress Terrace 6, Phase A Subdivision (#5366); and,
- B. Approving the subdivision agreement for Cypress Terrace 6, Phase A; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the subdivision agreement.

H.11. <u>19-480</u>

SUBJECT: Authorization to Purchase Nine Budgeted Fleet Vehicles, Including One Caterpillar Backhoe from Holt of California for \$131,128.90, Two Articulating Overcenter Aerial Devices (Tree Trimming Trucks) from Altec Industries for \$144,515 each, One Street Sweeper from Municipal Maintenance Equipment for \$299,992.14, One Front Loader Refuse Truck and Four Side Loader Refuse Trucks from Ruckstell for \$1,415,798.13; and to Waive the Competitive Bidding Requirement to Allow the Purchases to be Made Through a Cooperative Purchasing Agreement with Sourcewell

REPORT IN BRIEF

Considers authorizing a waiver of competitive bidding requirement pursuant to Merced Municipal Code Section 3.04.210 to purchase nine currently budgeted and Council approved fleet vehicles through the government procurement program Sourcewell.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the purchase of one Caterpillar Backhoe Loader in the amount of \$131,428.90 from Holt of California; and,
- B. Approving the purchase of two Articulating Overcenter Aerial Devices (Tree Trimming Trucks) in the amount of \$144,515.00 each from Altec Industries; and,
- C. Approving the purchase of one Schwarze Street Sweeper in the amount of \$299,992.14 from Municipal Maintenance Equipment; and,
- D. Approving the purchase of one Front Loader Refuse Truck in the amount of \$256,307.28 and Four Side Loader Refuse Trucks in the amount of \$1,159,490.85 from Ruckstell California Sales Co, Inc.; and,
- E. Waiving the City's competitive bidding requirement as permitted by Merced Municipal Code section 3.04.210 and authorizing the purchases to be made with cooperative purchase agreements through Sourcewell, a government procurement program; and,
- F. Authorizing the City Manager or the Assistant Manager to execute any necessary documents for the purchases specified above, the Finance Officer to make the appropriate budget adjustments and City Buyer to issue the Purchase Orders.

H.12. 19-461

SUBJECT: Adoption of Motion Receiving and Filing the Biennial Audit of the Sewer System Management Plan as Required by the State Water Resources Control Board

REPORT IN BRIEF

Considers the filing of the biennial audit of the Sewer System Management Plan.

RECOMMENDATION

City Council - Adopt a motion receiving and filing the biennial audit of the Sewer System Management Plan as required by the State Water Resources Control Board.

I. 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.

I.1. <u>19-434</u>

SUBJECT: Public Hearing Regarding Appeal of Planning Commission

Approval of Commercial Cannabis Business Permit #18-14R Filed by

Jiva Life, LLC

REPORT IN BRIEF

Request by Jiva Life, LLC. to appeal and reverse the Planning Commission's approval of Commercial Cannabis Business Permit (CCBP) #18-14R for Harvest of Merced.

RECOMMENDATION

City Council - Adopt a motion:

A. Option A - To affirm the Planning Commission's approval of CCBP #18-14R:

Adopting **Resolution 2019-__**, a Resolution of the City Council of the City of Merced, California, granting commercial cannabis business permit #18-14R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services, at 863 W. 15th Street, and making certain findings in connection therewith; or,

B. Option B - To reverse the Planning Commission's approval of CCBP #18-14R:

Adopting **Resolution 2019-__**, a Resolution of the City Council of the City of Merced, California, denying commercial cannabis business permit #18-14R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services, at 863 W. 15th Street, and making certain

findings in connection therewith.

J. REPORTS

J.1. 19-437

SUBJECT: Acceptance of Court Approved Receivership
Reimbursements, Appropriation of \$29,341 to the Substandard
Housing Special Recovery Fund for Fiscal Year 19/20, and
Authorization for Continuous Appropriation to Said Fund of Costs
Recovered by the Code Enforcement Task Force

REPORT IN BRIEF

Authorizes acceptance and appropriation of reimbursements for City costs and fees from Court-approved receiverships for public nuisance abatement pursuant to the Substandard Building Abatement Program in FY 19/20.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting reimbursements from the Court appointed Receiver and authorizing appropriation of \$29,341 to account 077-1005-522-29-00 (Substandard Housing Special Recovery) for FY 19/20; and,
- B. Authorizing any receipts of Substandard, Dangerous, or Nuisance abatement and cost recovery funds for FY 19/20 to be approved for appropriation on a continuous basis to the Substandard Housing Fund; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

J.2. 19-500

SUBJECT: Citizens Advisory Charter Review Committee Final Report to City Council to Place Possible Amendments to Sections 400, 402, 604, 7XX, 707, 711, and 1112 of the City of Merced Charter on the March 2020 Primary Ballot

REPORT IN BRIEF

Considers the final report from the Citizens Advisory Charter Review Committee for possible placement of recommended amendments to the City of Merced Charter on the March 2020 Primary Ballot.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting the final report and recommendations of the Citizens Advisory Charter Review Committee to amend various sections of the City of Merced Charter and directing staff to return to the October 7, 2019 City Council Meeting with the ballot question(s) and Resolutions for calling an election; or,
- B. Accepting the final report with Council suggested changes to the recommendations of the Citizens Advisory Charter Review Committee to amend various sections of the City of Merced Charter and directing staff to return to the October 7, 2019 City Council Meeting with the ballot question(s) and Resolutions for calling an election.

K. BUSINESS

K.1. 19-516 SUBJECT: Personnel Board Appointment (1)

REPORT IN BRIEF

Consider appointing one individual to the Personnel Board.

RECOMMENDATION

City Council - Adopt a motion appointing Dorothea "Lynn" White to serve as a member of the Personnel Board to a seat with a term expiration of July 1, 2022.

K.2. 19-482 SUBJECT: Request to Add Item to Future Agenda

REPORT IN BRIEF

Provides members of the City Council the opportunity to request that an item be placed on a future City Council agenda for initial consideration by the City Council.

K.3. 19-483 SUBJECT: City Council Comments

REPORT IN BRIEF

Provides an opportunity for the Mayor and/or Council Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the City and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.

L. ADJOURNMENT

MERCED

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item B.1. Meeting Date: 9/3/2019

SUBJECT: CONFERENCE WITH REAL PROPERTY NEGOTIATORS - Property: APN 059-240-081; Agency Negotiator: Frank Quintero, Director, Economic Development; Negotiating Parties: Mark Persico, Merced Designated Local Authority and City of Merced and; Under Negotiation: Price and Terms of Payment

MERCED

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item B.2. Meeting Date: 9/3/2019

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



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.1. Meeting Date: 9/3/2019

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

Agenda Item H.2. Meeting Date: 9/3/2019

Report Prepared by: Kirkland Greene, Records Clerk II

SUBJECT: Information-Only Contracts for the Month of August 2019

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$32,000 and of Public Works contracts under \$70,939.

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 2019-2020 threshold of \$70,939.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2019-2020 threshold of \$32,000.00, the contracts listed on the attached table were entered into by the City.

ATTACHMENTS

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

$\underline{Exhibit\ 1-Table\ of\ Contracts}$

9/3/2019 City Council Meeting

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Department/Division	Vendor	Purpose/Location	Amount
		Agreement for Use of Facility - Use of City-Owned Park at	
		Bob Hart Square (West Main Street and Canal Street) for	
0804 – Planning	The Regents of UC Merced	the UC Merced "Cat Crawl" on Friday, August 30, 2019.	(No funds.)
		Business Associate Agreement to Perform Services	
		Involving the Creation, Maintenance, Use, Transmission,	
		or Disclosure of HIPAA-Defined Protected Health	
0409 – Insurance	Alliant Insurance Services, Inc.	Information.	(No funds.)
		Emergency Medical Services (EMS) Service Agreement to	
		Provide Special Standby Emergency Medical Services for	
	Merced Union High School District	El Capitan High School's Home Football Games for the	
0901 – Fire	(MUHSD)	2019 Football Season.	(No funds.)
		Non-State Entity Service Policy and Agreement (NESPA)	
	AT&T / State of California,	Regarding the California Network and Telecommunica-	
0403 – Information Technology	Department of Technology	tions Program (CALNET; five-year term).	(No funds.)
		Inspect and identify in-road lighting that is not functioning	
		in the crosswalk at 23rd Street and "G" Street.	
1104 – PW - Streets	Cen-Pac Engineering	(Statement of Services, PO #135542.)	\$ 1,452.00
		Leisure Class Agreement for Independent Contractor	
		Services to Conduct Okinawan Karate and Kabaroan	
1201 – Recreation and Parks	Scott Lemberger	Escrima Martial Arts Classes (FY 2019-2020).	\$ 1,512.00
		Amendment No. 1 to the Solutions Agreement for	
		Software Maintenance, Support, and Hosting of the City's	
		Current Enterprise Resource Planning (ERP) System, to	
0403 – Information Technology	Superion, LLC (Central Square)	downgrade the test environment to match the live version.	\$ 1,910.00
		Conduct operator inspections and perform repairs, as	
1103 – PW - Fleet	Donlee Pump Company	needed, at all City of Merced fuel sites.	\$ 2,100.00
	Prime Actuarial Consulting, LLC	Agreement for Professional Services to Provide Workers'	
0409 – Insurance	(DBA: Bickmore Actuarial)	Compensation Actuarial Services.	\$ 4,500.00
		Agreement for Professional Services to Provide	
		Community Enrichment Services (to encourage bicycling,	
		foster safe and lawful cycling habits, and provide free	
1201 – Recreation and Parks	Merced Bicycle Coalition, Inc.	bicycle safety items) for Fiscal Year 2019-2020.	\$ 5,000.00

<u>Exhibit 1 – Table of Contracts (Continued)</u>

9/3/2019 City Council Meeting

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		Potholing (approximately 15) to locate utility lines in the	
0803 – Engineering	Mid Cal Pipeline & Utilities, Inc.	roadway of Alpine Drive (Project No. 119006).	\$10,500.00
		Agreement for Professional Services to Install Rockwell	
1106 – PW - Water Systems	JM Integration, LLC	Automation SCADA Software Revision Updates.	\$11,900.00
		Removal and replacement of corrugated metal storm drain	
		at 23rd Street and Martin Luther King, Jr. Way.	
1107 – PW - Sewer Systems	R & R Construction Co.	Statement of Services (PO #135746).	\$12,800.00
		California Welcome Center SM Designation, Pursuant to	
2006 – Welcome Center	California State Office of Tourism	Government Code Section 13995.151(a); four-year term.	\$20,000.00
		Change Order No. 1 - Well Site No. 5B repairs.	
1106 – PW - Water Systems	San Luis Pump Company	(Statement of Services, PO #134660.)	\$34,558.44



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.3. Meeting Date: 9/3/2019

SUBJECT: Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of August 5, 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 August 5, 2019.

ALTERNATIVES

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

ATTACHMENTS

1. Minutes of August 5, 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

Monday, August 5, 2019

6:00 PM

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 5:01 PM.

B.1. SUBJECT: CONFERENCE WITH LEGAL COUNSEL - EXISTING

<u>LITIGATION</u>; California Department of Finance v. City of Merced, et al.; Sacramento County Superior Court Case No.34-2016-80002485;

AUTHORITY: Government Code Section 54956.9(d)(1)

Clerk's Note: Council adjourned from Closed Session at 5:15 PM.

C. CALL TO ORDER

Mayor MURPHY called the Regular Meeting to order at 6:01 PM.

C.1. Invocation - Bruce Metcalf, Merced Rescue Mission

The invocation was delivered by Bruce METCALF from the Merced Rescue Mission.

C.2. Pledge of Allegiance to the Flag

Council Member SHELTON led the 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

There was no report.

F. CEREMONIAL MATTERS

F.1. SUBJECT: Recognition of UC Merced Chancellor Dorothy Leland

REPORT IN BRIEF

UC Merced Chancellor Dorothy Leland will be recognized for her time and contributions to UC Merced and to the City of Merced.

Mayor MURPHY presented a plaque of recognition to UC Merced Chancellor Dorothy LELAND.

F.2. SUBJECT: Certificate of Recognition Merced School of Employees

Federal Credit Union

REPORT IN BRIEF

Mayor Murphy will present a certificate of recognition to Mary Robinson Marketing Manager from Merced School Employees Federal Credit Union for their sponsorship of the City of Merced 2019 Summer at City Hall Program.

Mayor MURPHY presented a Certificate of Recognition to Mary ROBINSON, Marketing Manager from Merced School Employees Federal Credit Union for their sponsorship of the City of Merced 2019 Summer at City Hall Program.

F.3. SUBJECT: Proclamation - National Health Center Week

REPORT IN BRIEF

Presented to Yamilet Valladolid, Manager of Government Affairs Golden Valley Health Centers.

Mayor MURPHY presented the National Health Center Week Proclamation to Golden Valley Health Centers.

G. WRITTEN PETITIONS AND COMMUNICATIONS

There were none.

H. ORAL COMMUNICATIONS

Rodrigo ESPINOZA, Merced - spoke on the time allotted for public speaking. He also spoke on funding for South Merced.

Monica VILLA, Merced - spoke on an issue with a resident by Steven Leonard Park.

Yesenia CURIEL, Merced - introduced herself to the Council for their consideration for appointment for the Measure C Oversight Committee.

Charles AMANDO, Merced - spoke on the homeless issue in the City.

I. CONSENT CALENDAR

Items I.2. Information-Only Contracts for the Month of July 2019, I.11. Approval of a Professional Service Agreement Between the City of Merced and RSG Inc. for Housing Successor Agency Services in an Amount not to Exceed \$59,760.00 and I.12. Authorization to Apply for and Receive, State Senate Bill 2 Planning Grant Funding from the State of California Department of Housing and Community Development's (HCD) Planning Grants Program; 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.3. SUBJECT: Approval of City Council/Public Financing and

Economic Development/Parking Authority Meeting Minutes of July

1.5.

1, 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 July 1, 2019.

This Consent Item was approved.

I.4. SUBJECT: Approval of Supplemental Appropriation to Increase the FY

2019-20 Budget in the Amount of \$825 in Fund 344 - University Capital

Charge (Debt Service) for Annual Fee Expense

REPORT IN BRIEF

Considers approving \$825 supplemental appropriation to cover annual fees in Debt Service Fund 344-University Capital Charge.

RECOMMENDATION

City Council - Adopt a motion approving a supplemental appropriation in the amount of \$825 from the unappropriated, unreserved fund balance of Debt Service Fund 344 - University Capital Charge to cover annual fees.

This Consent Item was approved.

SUBJECT: Adoption of Resolutions Approving Proposition 68
Statewide Park Program Grant Round 3 - Grant Applications for
Charles Ogletree Park Project, Fahren's Creek Site Park Project,
and Lester K. Yoshida Park Project

REPORT IN BRIEF

Considers approving three Resolutions to approve three final statewide park program grant applications, and if awarded, accept contract terms.

RECOMMENDATION

City Council - Adopt a motion:

A. Adopting Resolution 2019-46, a Resolution of the City Council of

1.6.

the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Charles Ogletree Park Project; and.

- B. Adopting **Resolution 2019-47**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Fahren's Creek Site Park Project; and,
- C. Adopting **Resolution 2019-48**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Lester K. Yoshida Park Project; and,
- D. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

SUBJECT: Acceptance of a Petitions to Annex into Community
Facilities District (CFD) No. 2003-2 (Services) and Approval of
Deposit and Reimbursement Agreements for the Costs of Annexing
into the CFD for the Merced Gateway Shopping Center (Merced
Gateway Marketplace) and the PG&E Service Center

REPORT IN BRIEF

Considers accepting the petition to annex into CFD No. 2003-2 (Services) from Gateway Park Development Partners, LLC, and PG&E and approve a deposit and reimbursement agreement for the costs of annexing into the CFD for the Merced Gateway Shopping Center (Merced Gateway Marketplace) and the PG&E Service Center.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting the petition for annexation from Gateway Park Development Partners, LLC and PG&E for annexation into Community Facilities District (CFD) No. 2003-2 (Services); and,
- B. Approving the deposit and reimbursement agreements, increasing revenue account in the amount of \$50,000 and appropriating the same

in Fund 150 to reimburse the City for the cost of Community Facilities District formation and related expenditures; and,

C. Authorizing the City Manager or the Assistant City Manager to execute the Agreements.

This Consent Item was approved.

I.7.

SUBJECT: Approval of a Fifteen (15) Year Conduit Lease

Agreement for the Expansion of Telecommunication Services for the City and CVIN, LLC dba VAST NETWORKS, a Competitive Local Exchange Carrier with the Option to Renew the Contract in 5 Year Increments

REPORT IN BRIEF

Considers entering into a fifteen (15) year conduit lease agreement for the expansion of telecommunication services for the City and CVIN, LLC dba VAST NETWORKS, a Competitive Local Exchange Carrier with the option to renew the contract in 5-year increments.

RECOMMENDATION

City Council - Adopt a motion approving the lease agreement with CVIN, LLC dba VAST NETWORKS; and authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

1.8.

SUBJECT: Approval of Agreement for Labor Relations Consulting,
Labor Contract Negotiations and Employee Related Legal Services
with the Law Firm of Liebert Cassidy Whitmore in the Not to Exceed
Amount of \$100,000

REPORT IN BRIEF

Considers approving an agreement for labor relations consulting, labor contract negotiations and employee related legal services with the law firm of Liebert Cassidy Whitmore.

RECOMMENDATION

City Council - Adopt a motion approving an agreement for professional services with the law firm of Liebert Cassidy Whitmore for labor relations consulting, labor contract negotiations, and employee related matters and authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.9. SUBJECT: Acceptance of Donation in the Amount of \$100 from

Two Anonymous Donors and Appropriating the Same for Hydration

Supplies for the Firefighters

REPORT IN BRIEF

Considers accepting a \$100 donation from two anonymous donors, who indicated that they would like bottled water to be purchased for the firefighters.

RECOMMENDATION

City Council - Adopt a motion accepting the \$100 donation from two anonymous citizens, increasing revenue account 001-0901-360.02-01 (Contributions and Donations) in the amount of \$100 and appropriating the same in account 001-0901-522.29.00 (Supplies and Services).

This Consent Item was approved.

I.10. SUBJECT: Approval of Program Supplement No. F033 to

Administering Agency State Agreement for Federal Aid Project

10-5085F15 and Approval of Summary (E-76) for a Congestion

Mitigation and Air Quality Improvement (CMAQ) Grant

CML-5085(051) 120043 CMAQ-SDWK Infill Olive Avenue, Parsons

Avenue and Alexander Avenue in the Amount of \$70,087

REPORT IN BRIEF

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$70,087 in CMAQ Grant funding for Preliminary Engineering for the sidewalks on Olive Avenue from Queen Circle to Parsons Avenue, on Alexander Avenue from Nottingham Lane to Parsons Avenue and on Parsons Avenue from Olive Avenue to south of Hansen Avenue.

RECOMMENDATION

City Council - Adopt a motion:

A. Adopting **Resolution 2019-44**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. F033; and,

B. Accepting CMAQ grant funds and increasing revenue in account

450-1104-321-32-00 by \$70,087 and appropriating the same to account 450-1104-637-65-00 (Project No. 120043) for preliminary engineering costs associated with design of sidewalks on Olive Ave from Queen Circle to Parsons Avenue, on Alexander Avenue from Nottingham Lane to Parsons Avenue and on Parsons Ave from Olive Avenue to south of Hansen Avenue; and,

- C. Approving the use of pooled cash until reimbursement is received from the grant; and,
- D. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.13.

SUBJECT: Approval of First Amendment to the Professional
Services Agreement for the Solid Waste Collection and Related
Services Rate Study with R3 Consulting Group, Inc., in the Amount
of \$15,000 to Provide Additional Consulting Services for Review of
New Financial Information, Providing Associated Additional Rate
Options and Additional In-Person Meeting(s)

REPORT IN BRIEF

Considers approving a First Amendment to Professional Services Agreement with R3 Consulting Group, Inc., in the amount of \$15,000, for additional consulting services for the Solid Waste Collection and Related Services Rate Study.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving a First Amendment to the professional services agreement with R3 Consulting Group, Inc., in the amount of \$15,000, to provide additional consulting services for the Solid Waste Collection and Related Services Rate Study; and
- B. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.14.

SUBJECT: Selection of Eligible Roadway Projects and Submittal of 2018/2019 Regional Surface Transportation Program (RSTP)

Exchange Funds Claim Form in the Amount of \$980,871 to be Filed

with the Merced County Association of Governments (MCAG)

REPORT IN BRIEF

Selects projects and authorizes staff to complete the FY 2018/2019 Regional Surface Transportation (RSTP) Claim Form in the amount of \$980,871 for submittal to the Merced County Association of Governments (MCAG).

RECOMMENDATION

City Council - Adopt a motion:

- A. Selecting Project 1 B Street Improvements, in the amount of \$500,000 and Project 2 M and Main Street Improvements in the amount of \$480,871, to be completed utilizing the FY 2018-2019 RSTP Exchange Funds; and,
- B. Directing staff to complete the 2018-2019 RSTP claim form by listing the selected projects and corresponding project costs; and,
- C. Adopting **Resolution 2019-51**, a Resolution of the City Council of the City of Merced California, authorizing the City Manager to file the Regional Surface Transportation Program (RSTP) Exchange Funds claim for Fiscal Year 2018-2019; and,
- D. Authorizing the Finance Officer to make necessary budget adjustments for Fiscal Year 2019-2020.

This Consent Item was approved.

I.15. SUBJECT: Adoption of Resolution Approving the 2019/2020 Local

Transportation Fund (LTF) Claim Form in the Amount of \$191,250
to be Filed with the Merced County Association of Governments

(MCAG)

REPORT IN BRIEF

Approves and accepts \$191,250 in Local Transportation Funds (LTF) from Merced County Association of Governments (MCAG) for street and road maintenance.

RECOMMENDATION

City Council - Adopt a motion:

A. Adopting Resolution 2019-43, a Resolution of the City Council of

the City of Merced, California, approving the Local Transportation Fund (LTF) Claim to be filed with the Merced County Association of Governments (MCAG) for Fiscal Year 2019/2020; and,

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

This Consent Item was approved.

I.2. SUBJECT: Information-Only Contracts for the Month of July 2019

REPORT IN BRIEF

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

Council Member ECHEVARRIA pulled this item to ask about the contract regarding a craft brewing workshop.

Economic Development Director Frank QUINTERO explained that the contract will give insight into how to grow Merced's nightlife.

A motion was made by Council Member Blake, seconded by Council Member McLeod, that this agenda item be approved. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Martinez, Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, and Council Member Shelton

No: 0

Absent: 0

I.11.

Abstain: 1 - Council Member Echevarria

SUBJECT: Approval of a Professional Service Agreement Between the City of Merced and RSG Inc. for Housing Successor Agency Services in an Amount not to Exceed \$59,760.00

REPORT IN BRIEF

Considers approving the terms and scope of services for a professional services agreement with RSG Inc. to provide consulting services to the City of Merced and the City's Housing Successor Agency.

RECOMMENDATION

City Council - Adopt a motion approving the professional services agreement between the City of Merced and RSG Inc. for consulting

services related to the Housing Successor Agency in the amount not to exceed \$59,760.00 and authorizing the City Manager or the Assistant City Manager to execute all the necessary documents.

Council Member SERRATTO pulled this item to ask about the value to the community of the services.

Housing Supervisor Mark HAMILTON explained that the services would provide expertise in the low to moderate housing as well as guiding the City on spending the funds that are received.

A motion was made by Council Member Serratto, seconded by Council Member McLeod, 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.12.

SUBJECT: Authorization to Apply for and Receive, State Senate Bill 2
Planning Grant Funding from the State of California Department of
Housing and Community Development's (HCD) Planning Grants
Program

REPORT IN BRIEF

Authorizes Housing Division Staff to apply for grant funding under State Bill 2 (SB 2) Planning Grants Program in association with a Notice of Funding Availability issued by the California State Department of Housing and Community Development (HCD) and authorizes the receipt of grant funds.

RECOMMENDATION

City Council - Adopt a motion:

- A. Adopting **Resolution 2019-27**, a Resolution of the City Council of the City of Merced, California, authorizing the submittal of an application to the California Department of Housing and Community Development for, and receipt of, SB 2 planning grant program funds; and,
- B. Authorizing the City Manager or the Assistant City Manager to execute the standard agreement and other necessary documents associated with the grant application and award process.

Council Member SERRATTO pulled this item to highlight the opportunity for State Sentae Bill 2 Planning Grant.

Clerk's Note: This item was approved in conjunction with item I.11.

A motion was made by Council Member Serratto, seconded by Council Member McLeod, 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

J. PUBLIC HEARINGS

SUBJECT: Continued Public Hearing - Adoption of a Categorical

Exemption (Environmental Review #19-04) and Introduction of

Ordinance Amending Section 20.42 and Various Other Sections of the

Merced Municipal Code Regarding Accessory Dwelling Units (Zoning

Ordinance Amendment #19-02)

REPORT IN BRIEF

Considers the adoption of a Categorical Exemption and the introduction of an Ordinance (one of two options) which would modify the City's zoning regulations regarding accessory dwelling units.

RECOMMENDATION

City Council - Adopt a motion:

OPTION 1 (Based on City Council Direction on July 1, 2019)

A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and

20.90.020 ("Glossary, Definitions") of the Merced Municipal Code.

OR

OPTION 2 (As Recommended by the Planning Commission)

A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and 20.90.020 ("Glossary, Definitions") of the Merced Municipal Code, with Section 20.42.030(G)(2) amended as outlined below.

Planning Manager Kim ESPINOSA gave a slide show presentation on the Zoning Ordinance Amendment #19-02 Accessory Dwelling Units.

Mayor MURPHY opened and subsequently closed the Public Hearing at 6:42 PM due to a lack of public comment.

Council and Ms. ESPINIOSA discussed the owner occupancy language, the state law, and R1 and R2 zoning.

A motion was made by Council Member Blake, seconded by Council Member McLeod, to approve the introduction of Ordinance 2502 option 1 with the amended owner occupancy language and to adopt a Categorical Exemption (Environmental Review #19-04). The motion carried by the following vote:

Aye: 5 - Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, and Council Member Shelton

No: 2 - Mayor Pro Tempore Martinez, and Council Member Echevarria

Absent: 0

J.2.

SUBJECT: Public Hearing and Adoption of Resolution Denying the

Appeal of the Planning Commission's Decision to Grant a One-Year

Extension to Bright Development for Vesting Tentative Subdivision Map
#1291 for the Subdivision Involving 39.8 Acres Generally Located on
the East Side of G Street at Merrill Place (Extended)

REPORT IN BRIEF

Provides Resolution for adoption to deny the appeal filed by BP Investors, LLC, Leeco, LLC, Exposition Properties, LLC and Rick Telegan, as adjacent landowners of the Planning Commission's decision to approve a one-year extension for Vesting Tentative Subdivision Map (VTSM) #1291 per City Council direction on June 3, 2019.

RECOMMENDATION

City Council - Adopt a motion approving Resolution 2019-38, A Resolution of the City Council of the City of Merced, California, denying an appeal by BP Investors, LLC; Leeco, LLC; and Exposition Properties, LLC, concerning the action of the Planning Commission resulting in the approval of the extension of Vesting Tentative Subdivision Map #1291 (Modified) for Bright Development, which extended the expiration date of the Vesting Tentative Subdivision Map to January 16, 2020.

Planning Manager Kim ESPINOSA requested to continue the Public Hearing to the August 19, 2019 meeting because the representatives were unable to attend the meeting.

Mayor MURPHY opened and subsequently closed the Public Hearing at 6:56 PM due to a lack of public comment.

A motion was made by Council Member McLeod, seconded by Council Member Blake, that this agenda item be continued. 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. REPORTS

K.1. SUBJECT: <u>Update and Final Report on Celebrate Safe Fireworks</u>
Campaign for 2019

REPORT IN BRIEF

Provides a final report to Council on the Celebrate Safe Fireworks Campaign from the Fire Chief and Police Chief.

RECOMMENDATION

K.2.

Provide staff direction as needed on preparing the Celebrate Safe Fireworks Campaign for next year.

Fire Chief Billy ALCORN and Police Chief Chris GOODWIN gave a slide show presentation updating Council on the final report on Celebrate Safe Fireworks Campaign for 2019.

DonnaLee HARTMAN, Merced - spoke on her experience volunteering at the Celebrate Safe call center.

Belinda BURNETT, Merced - spoke on her experience volunteering at the Celebrate Safe call center.

Clerk's Note: No formal action was taken, this item was an information-only item.

SUBJECT: Report to the City Council on Recommended Police and
Fire Facility Sizing and Configuration, Financing Structure and
Funding Requirements for the Proposed Public Facilities Bond
Measure

REPORT IN BRIEF

City Staff will provide a report to the City Council on recommendations for facility sizing and configuration of the proposed Police Headquarters and future Fire Stations, potential framework for a financing structure and other funding requirements necessary to support a potential Public Facilities Bond Measure for the March 2020 ballot.

RECOMMENDATION

Provide staff direction on next steps for a proposed Ballot Measure question related to the proposed Public Facilities Bond Measure.

City Manager Steve CARRIGAN and Assistant City Manager Stephanie DIETZ gave a slide show presentation on the Proposed Public Facilities Bond Measure.

Council and Fire Chief Billy ALCORN discussed combining Fire Station 54 to include a Police substation and the use of impact fees for Station 54 and equipment.

Ms. DIETZ continued her presentation.

Council Member ECHEVARRIA suggested locating the proposed Police Station in District 2.

Ms. DIETZ continued her presentation.

Police Chief Chris GOODWIN discussed the challenges the Police Department faces with the current building they are in.

Council, Police Chief GOODWIN, and Ms. DIETZ discussed substations, staffing, combining a Fire and Police station, the location of the proposed Police Station, continuing Measure C, and the needs assessment.

Chad ENGLERT, Merced - encouraged Council to make Measure C a priority over the Facilities Bond Measure.

Michael BELLUOMINI, Merced - recommended the Council to communicate with consultants.

Council Member BLAKE discussed meeting with the consultants to get direction on which option would be better.

Council and MS. DIETZ discussed holding a Study Session with the consultants and giving direction for next steps.

Council continued to discuss the options for the Police Station and Measure C.

Clerk's Note: Council directed staff to schedule a Study Session with LPA consultants and NWL consultants with options for the size, location, and cost of the proposed Police Station.

Clerk's Note: Council recessed at 8:30 PM and returned at 8:43 PM.

L. BUSINESS

L.1. SUBJECT: Discussion on Attendance and Designation of Voting

Delegate and Alternates for the 2019 League of California Cities

Annual Conference - Annual Business Meeting, October 16 - October

18, 2019, Long Beach, CA

REPORT IN BRIEF

To expedite the conduct of business at this important policy-making meeting, each City Council is asked to designate a voting representative and two alternates who will be present at the meeting.

RECOMMENDATION

City Council - Adopt a motion designating one voting delegate and two alternate voting delegates to the League of California Cities Annual Conference General Business Meeting, scheduled for Friday afternoon, October 18, 2019 in Long Beach, CA.

A motion was made by Council Member Blake, seconded by Mayor Pro Tempore Martinez, to appoint Council Member Shelton as the voting delegate and Mayor Pro Tempore Martinez and Council Member Serratto as alternates to the Annual League of California Cities Conference. 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

L.2. SUBJECT: Citizens' Oversight Committee - Measure C Appointments

REPORT IN BRIEF

Accept recommendation to fill Citizens' Oversight Committee - Measure "C" vacancies.

RECOMMENDATION

City Council - Adopt a motion accepting recommendation from the Citizens' Oversight - Measure "C" Subcommittee and appointing one individual to the Central District to serve as a member of the Committee and one individual to the Northern District to serve as a member of the Committee.

A motion was made by Council Member Serratto, seconded by Council Member Blake, to appoint Dorothea White to the Nothern District and Yesenia Curiel to the Central District on the Measure C Committee. 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

L.3. SUBJECT: Bicycle Advisory Commission Appointment

REPORT IN BRIEF

Consider accepting nominations and appointing two individuals to the Bicycle Advisory Commission.

RECOMMENDATION

City Council - Adopt a motion accepting nominations and appointing two applicants to serve on the Bicycle Advisory Commission.

Lisa KEYSER-GRANT, Merced - spoke on her interest to be appointed to the Bicycle Advisory Commission.

A motion was made by Council Member Blake, seconded by Council Member McLeod, to appoint Kahlyn Moody (2023 term), Lisa Kayser-Grant (2023 term) and Dwight Ewing (2021 term) to the Bicycle Advisory Commission. The motion carried by the following vote:

Aye:

 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

L.4.

SUBJECT: City Council Appointment to the Arts and Culture Advisory
Commission for City Council District 2

REPORT IN BRIEF

Considers accepting nomination and appointing one individual to Council District 2 on the Arts and Culture Advisory Commission.

RECOMMENDATION

City Council - Adopt a motion accepting nomination and appointing one individual to the Arts and Culture Advisory Commission to represent City Council District 2.

Maria ZARAGOZA, Merced - spoke on her interest to be appointed to the Arts and Culture Advisory Commission.

A motion was made by Council Member Echevarria, seconded by Mayor Pro Tempore Martinez, to appoint Maria Zaragoza to District 2 on the Arts and Culture Adisvory Commission. 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

L.5.

SUBJECT: Discussion on Current Composition of the Governing Board
Composition of Merced County Association of Governments and the
Proposed Amendments to Governing Board Composition

REPORT IN BRIEF

Mayor to provide an update on a recent Merced County Association of Government Agenda Item for consideration and to provide an opportunity for City Council to discuss the proposed Governing Board composition.

RECOMMENDATION

City Council - Information Only; to provide an opportunity for City Council to discuss the Merced County Association of Government proposed Governing Board composition.

Mayor MURPHY gave an update on the Current Composition of the Governing Board Composition of Merced County Association of Governments (MCAG) and the Proposed Amendments to Governing Board Composition.

Council discussed the current composition of the Governing Board Composition of MCAG.

L.6.

SUBJECT: Request to Add Item to Future Agenda

REPORT IN BRIEF

Provides members of the City Council to request that an item be placed on a future City Council agenda for initial consideration by the City Council.

Council Member SERRATTO asked about an update on Railroad Quiet Zones. He also requested to add an item on an art project on the M Street Bridge.

L.7.

SUBJECT: City Council Comments

REPORT IN BRIEF

Provides an opportunity for the Mayor and/or Council Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the City and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.

Council Member ECHEVARIA reported on attending the Pride Parade and the Heath Fair.

Council Member SHELTON reported on attending the Behavioral Health Spiritual Wellness event and the Stonefield Homes open house.

Mayor Pro Tempore MARTINEZ reported on attending the Stonefield Homes open house, the Builders Forum and the Charter Review Committee meeting. He also announced a District 1 Town Hall meeting.

Council Member MCLEOD reported on attending a play at Playhouse Merced. She also announced the upcoming Playhouse Merced Gala.

Mayor MURPHY reported on attending the Association of Realtors meeting, the Charter Review Committee meeting, the Merced County Association of Governments meeting, the Summer at City Hall ceremony, the Police Swearing -in event, the Builders Forum, and homelessness meetings. He also spoke on the upcoming National Night Out Event.

M. ADJOURNMENT

Clerk's Note: The Regular Meeting was adjourned at 9:07 PM.

A motion was made by Council Member Blake, seconded by Council Member Serratto, to adjourn the Regular Meeting. 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

MERCED

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.4. Meeting Date: 9/3/2019

Report Prepared by: Frank Quintero, Director of Economic Development

SUBJECT: Approval of a Three (3) Year Lease Agreement with James G. Moulton, Trustee, and Lynda S. Moulton, Trustee, for a 9,000 Square Foot Facility with Initial Base Rent of \$5,475/NNN Per Month and the Option to Extend for an Additional Three (3) Years

REPORT IN BRIEF

Considers approving a three-year lease agreement with James G. Moulton and Lynda S. Moulton for property to be utilized by the Merced Police Department.

RECOMMENDATION

City Council - Adopt a motion approving the lease agreement between the City of Merced and James G. Moulton, Trustee, and Lynda S. Moulton, Trustee and authorizing the City Manager, the Assistant City Manager, or the Finance Office to make necessary adjustments and execute the document.

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

As provided for in the 2019-2020 Adopted Budget

DISCUSSION

The original Lease Agreement approved on June 6, 2016 is expired, and staff has negotiated another three-year lease and option for an additional 3-years with Jim Moulton and Lynda Moulton, Trustees. The subject building and property will continue to be used by the Merced Police Department. The proposed Lease Agreement reflects a starting market lease rate of \$5,475 per month and allows for annual increases based on the State of California Consumer Price Index (CPI). The annual rent adjustment shall not be less than two percent (2%) or greater than five percent (5%) per year, regardless of the actual change in the CPI.

File #: 19-511 Meeting Date: 9/3/2019

Notable terms of the proposed Lease Agreement are as follows:

Term: Three (3) years with the option to renew for an additional three (3) years.

Rent: Five-thousand (\$5,475) per month plus annual hazard insurance and property taxes.

Utilities: Cost of utilities such as gas, power, telephone, and so on, are the responsibility of the Tenant.

IMPACT ON CITY RESOURCES

The rent and use of the property will be paid for with Asset Forfeiture Funds.

ATTACHMENTS

1. Property Lease Agreement

LEASE AGREEMENT

THIS I	LEASE AGREEMENT ("Lease"), made and entered into this
day of	, 2019, by and between the City of Merced, a California
Charter Muni	cipal Corporation (hereinafter referred to as "Tenant"), and James
G. Moulton,	Trustee and Lynda S. Moulton, Trustee (hereinafter referred to as
"Landlord").	· · · · · · · · · · · · · · · · · · ·

WITNESSETH:

- 1. LEASED PREMISES. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord those certain premises outlined on Exhibit "A" attached hereto and made a part hereof (hereinafter called "Premises|"), together with those appurtenances specifically granted in this Lease. The Premises are a part of an industrial parcel known as Assessor's Parcel Number 059-430-033 (Building 1) and commonly referred to as 107 Heron Way, Merced, California. The Leased Premises shall consist of the exclusive use of the building, designated parking for spaces as delineated on the attached Exhibit "A," as well as the non-exclusive use of the common area parking lot as well as the common driveway used for ingress and egress to / from Heron Way that services both 107 Heron Way and 115 Heron Way as delineated on said 'Exhibit "A".
- 2. TERM. The term of this Lease shall be for a period of three (3) years (said term hereinafter called the "Lease Term"). The Lease Term and the rent shall commence from the expiration of the prior Lease Agreement, and shall continue for thirty-six (36) months thereafter ("Commencement Date"). In the event that the Commencement Date is other than the first day of the month the Lease Term shall be thirty-six (36) months plus the number of days remaining in the month that the Lease commences. Tenant shall pay Landlord in advance of occupancy the first month's rent as well as the prorated rent, if applicable, for the number of days in the month that the Commencement Date occurs if other than the first day of the month.
- 3. EARLY TERMINATION. Tenant shall have the option to be released from its lease obligation by first giving Landlord a written NOTICE OF INTENTION TO VACATE THE PREMISES. Tenant shall provide Landlord with a minimum of one hundred twenty (120) days written notice prior to the effective date of the early lease termination date and shall reimburse Landlord for unamortized tenant improvements, if any, and the unamortized leasing commission paid by Landlord from the effective date of the early lease termination to the then applicable lease termination date.

- 4. RENT. The rent during the first twelve (12) months of the lease shall be Five Thousand Four Hundred Seventy-Five Dollars (\$5,475) NNN and shall be paid to Lynda Moulton at 3260 Flint Trail, Ione, CA 95640, or at any other location specified by Landlord in writing to Tenant.
- 5. COST OF LIVING ADJUSTMENT. The annual rent shall be adjusted upon the first day immediately following the expiration of 12 full calendar months from the Commencement Date and upon the expiration of each 12 months thereafter (including any lease renewal terms), in accordance with the changes in the State of California Consumer Price Index All Urban Consumers (CPI). The monthly rent will be increased to an amount equal to the current monthly rent of \$5,475 multiplied by a fraction the numerator of which is the CPI for the month of February immediately preceding the adjustment date, and the denominator of which is the CPI for the month of February 2019; provided, however, that the annual rent adjustment increase shall not be less two percent (2%) per year or greater than five percent (5%) per year regardless of the actual change in the CPI.
- OPTION TO RENEW. Provided that Tenant is not in default in the performance of this Lease, Tenant shall have an option to renew the Lease for a three (3) year renewal term commencing at the expiration of the initial lease term and, if applicable, the expiration of subsequent renewal terms. All of the terms and conditions of the Lease will apply during the renewal term, except that the rent will be increased to an amount equal to the rent for the period immediately prior to the commencement of the renewal term in question multiplied by a fraction the numerator of which is the Consumer Price Index ("CPI") for the State of California-All Urban Consumers for the month of February immediately preceding the adjustment date and the denominator of which is the CPI for the month of February 2019 provided however that the rent shall be adjusted upward by no less than two percent (2) and no more than five percent (5%) on each adjustment date. In order to exercise the lease renewal option Tenant must notify Landlord in writing no more than six months prior to, nor less than four months prior to, the expiration of the then current lease term of Tenant's intent to exercise the lease renewal option.
- 7. HOLDING OVER. If after expiration of the term, Tenant remains in possession of the premises, at the option of the Landlord, Tenant shall become a Tenant from month-to-month only, upon all provisions of this Lease (except as to term and base rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to an amount equal to one hundred and twenty percent

(120%) of the rent being paid for the month the Lease expires. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, he shall give the other party not less than thirty (30) days advance written notice of the date of termination. Any option to renew, extend or purchase, or other options, do not survive the expiration of this Lease.

- LATE CHARGE; INTEREST; NSF CHECKS. Tenant 8. acknowledges that either late payment of rent or issuance of a NSF check may cause Landlord to incur costs or expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and Late Charge imposed on Landlord. If any installment of rent due from Tenant is not received by Landlord within ten (10) calendar days after due date, of if a check is returned NSF, Tenant shall pay to Landlord, respectively, TWO HUNDRED FIFTY DOLLARS (\$250) as late charge, plus 10% interest per annum on the delinquent amount and \$40 dollars as a NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due or prevent Landlord from exercising any other rights and remedies under this agreement and as provided by law.
- 9. ALTERATIONS, REPAIRS AND MAINTENANCE. Tenant shall not make any alterations to, or changes to, the Premises without the prior written consent of Landlord. Tenant shall give fifteen (15) days prior written notice to Landlord before contracting for any work or repairs to the Premises that might subject the Premises to any mechanic's, materialmen's, or other lien, for the purpose of enabling Landlord to post notices of non-responsibility, and Tenant shall cause any such lien which secures any labor, services, materials or supplies alleged to have been furnished Tenant to be fully discharged and released at the time performance of the secured obligation matures or becomes due, except for furnishings, trade fixtures, signs and equipment. All alterations, improvements and changes to the Premises made by Tenant shall be the property of Tenant and may be removed upon termination at Tenant's option and the premises returned to its original condition at the time of possession reasonable wear and tear excepted.

Unless otherwise indicated upon the date of possession, Tenant acknowledges that the Premises are in good order and repair. Tenant shall at its own expense maintain the Premises in good and safe condition, including glazing, electrical wiring, and plumbing. Tenant shall be responsible for changing filters on the HVAC system as needed but no less than once every three (3) months and for having the HVAC system serviced annually. Tenant shall also be responsible for providing the Merced City Fire Department with required flow test reports. The costs incurred for normal routine maintenance of the HVAC system and fire sprinkler system, as well as any costs occasioned by Tenant's negligence and improper usage of the HVAC system and fire sprinkler system shall be borne by the Tenant. Any other costs associated with repairs to the HVAC system and fire sprinkler system shall be the responsibility of the Landlord.

The Premises shall be surrendered, at the termination of the Lease, in as good as condition as received, normal wear and tear excepted.

10. INSURANCE.

- (a) Landlord Insurance. Landlord shall maintain hazard insurance (excluding flood and earthquake insurance) covering one hundred percent (100%) replacement cost of the improvements throughout the Lease Term. Tenant shall reimburse Landlord for the cost of said insurance. As of 2019, said insurance cost is One Thousand Five Hundred Thirteen Dollars (\$1,513.00) a year.
- (b) Tenant Insurance. Tenant shall at Tenant's expense (unless self-insured in which case Tenant shall provide Landlord with a certified letter so stating) maintain public liability insurance, including bodily injury and property damage, insuring Tenant and Landlord with a minimum coverage of one million dollars (\$1,000,000) combined single limits. If not self-insured, Tenant shall provide Landlord with a Certificate of Insurance showing Landlord as additional insured. The policy shall require ten (10) days written notice to Landlord prior to cancellation or material change of coverage.
- 11. TAXES. Landlord shall pay all property taxes when they become due. Tenant shall reimburse Landlord, within sixty (60) days of receipt of a copy of the tax bill, for one hundred percent (100%) of the real property taxes attributable to the Property. For the 2018/2019 tax year, the property tax was

Four Thousand Six Hundred Eighty-Eight Dollars (\$4,688.00) which shall be prorated based upon the Lease Commencement Date and paid with the first month's rent.

- 12. DEFAULT. The happening of any of the following events shall constitute a default of this Lease by Tenant:
 - (a) Tenant's interest, or any part of its interest, in this Lease is assigned or transferred, either voluntarily or by operation of law; or
 - (b) A voluntary or involuntary petition in bankruptcy, or for reorganization, or for an arrangement, is filed by or against Tenant, or any member of Tenant if Tenant is a partnership or joint venture, or Tenant is adjudicated bankrupt or insolvent, or a receiver is appointed of the business or of the assets of Tenant, or Tenant makes a general assignment or any assignment for the benefit of its creditors; or
 - (c) Tenant, after notice, fails to remedy any default in the payment of any sum due under this Lease within fifteen (15) days after such notice or in keeping of any term, covenant or condition of this Lease with all reasonable dispatch, in any event not exceeding thirty (30) days after such notice; or
 - (d) Tenant abandons or vacates the Premises.
- 13. ATTORNEY'S FEES. If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.
- 14. WAIVER. No failure of Landlord to enforce any term of this Lease shall be deemed to be a waiver. No purported waiver of any provision of this Lease shall be effective unless in writing and signed by a duly

authorized representative of the party against whom enforcement of a waiver is sought.

15. NOTICES. Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid to the addressesh listed below, or at such other place as may be designated by the parties from time to time. Notice shall be effective five (5) days after mailing, or immediately upon personal delivery.

TENANT:

City Clerk

City of Merced

678 West 18th Street Merced, CA 95340

With a copy to:

City Attorney

City of Merced

678 West 18th Street Merced, CA 95340

LANDLORD:

James G. Moulton

1388 West Dickinson Ferry Road

Merced, CA 95340

Lynda S. Moulton 3260 Flint Trail Ione, CA 95640

- 16. ORDINANCES AND STATUTES. Tenant shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force or which may later be in force.
- 17. LANDLORD'S WARRANTY OF TITLE. Landlord represents and warrants that:
 - (a) Landlord is the sole owner in fee simple of the Premises and has full right and power to grant the estate demised and to execute and perform this Lease; and
 - (b) The Premises will remain free and clear of all encumbrances that could adversely affect Tenant's leasehold estate.

- 18. QUIET ENJOYMENT. Landlord covenants and agrees that so long as Tenant observes and performs all the agreements and covenants required of it hereunder, Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the term of the Lease without any encumbrance or hindrance by Landlord.
- 19. TENANT'S OBLIGATIONS UPON VACATING PREMISES. Upon termination of agreement, Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate Premises and surrender it to Landlord empty of all persons and personal property; (iii) vacate all parking and storage spaces; (iv) deliver Premises to Landlord in the same condition as referenced in paragraph 11; (v) clean Premises; (vi) give written notice to Landlord of Tenant's forwarding address.
- 20. DAMAGE. Tenant shall be responsible for any damage to Landlord's Premises which may result from Tenant's activities conducted on the Premises.
- 21. EXHIBITS. The Exhibits attached hereto are incorporated herein by this reference as if set forth in full.

22. MISCELLANEOUS PROVISIONS.

- (a) Entire Agreement. This Lease and exhibits hereto contain the complete, final, entire and exclusive expression of the agreement between the parties hereto, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Lease shall be null and void.
- (b) Section Headings. The section headings contained in this Lease are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.
- (c) No Reliance on Other Parties. All parties to this Lease declare that, prior to the execution of this Lease, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection in order that they might intelligently exercise their own judgment in evaluating the contents of this Lease and making the decision to execute it. The parties each represent and acknowledge that in executing this Lease, they do not rely and have not

relied upon any representation or statement not set forth herein made by any other party to this Lease with regard to the subject matter, basis or effect of this Lease.

- (d) Construction. The provisions of this Lease shall be liberally construed to effectuate its purpose. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Lease. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.
- (e) Governing Law. The validity and interpretation of this Lease shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws. Any action pursuant to this Lease shall be brought exclusively in state courts for Merced County.
- (f) Counterparts. This Lease may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Lease is in the physical possession of the party seeking enforcement thereof.
- (g) Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Lease on behalf of his/her/their corporation, partnership, business entity, or governmental 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.

(h) Estoppel Certificates.

(1) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in

default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver such statement to Landlord within ten (10) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

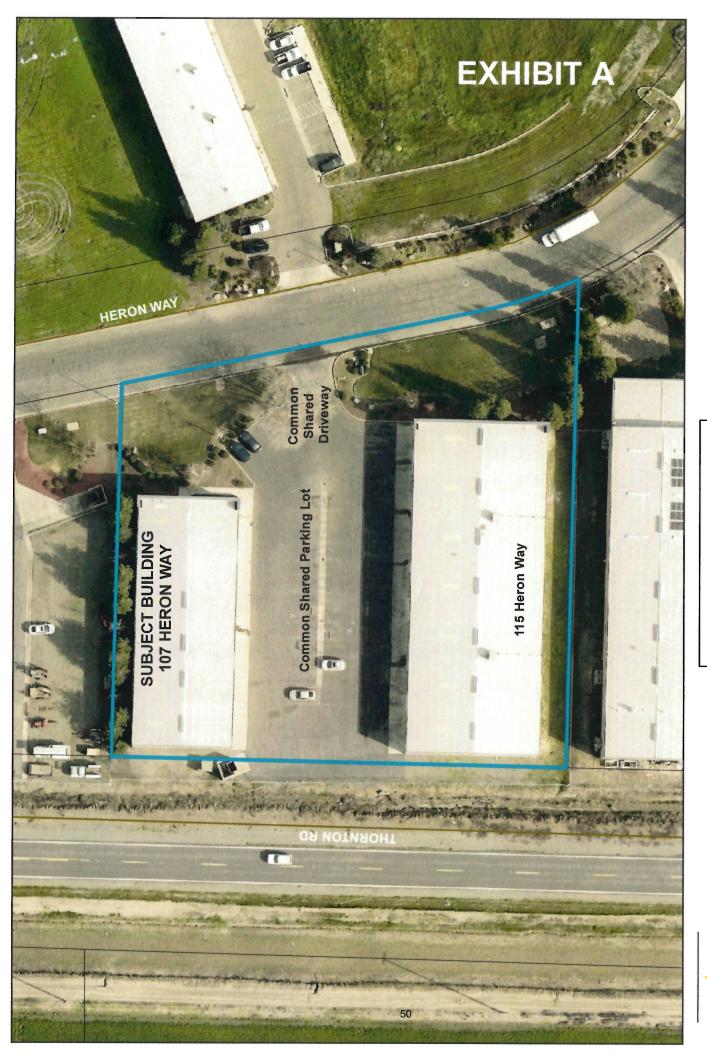
(2) If Tenant does not deliver such statement to Landlord within such ten (10) -day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

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

TENANT CITY OF MERCED A California Charter Municipal Corporation

y Manager

APPROVED AS TO FORM:	
BY: S/U City Attorney Date	<u>//9</u> e
ACCOUNT DATA:	
BY: Verified by Finance Officer	
	LANDLORD
	BY: James G. Moulton
	BY: Lynda S. Moulton
	Taxpayer I.D. No. <u>553-17-2083</u>
	Business License No.:
	ADDRESS: 1388 W. Dickinson Ferry Rd Merced, CA 95341
	TELEPHONE: (209) 777-6400 FACSIMILE: (209) 384-2581 E-MAIL: Jim.CCMarine@sbcglobal.net





CITY OF MERCED SUBJECT LEASE AREA 107 HERON WAY APN 059-430-033



MERCED

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.5. Meeting Date: 9/3/2019

Report Prepared by: Donald King, Captain, Police Department

SUBJECT: Adoption of Resolution Extending the Participation in the Abandoned Vehicle
Abatement Program (AVA) with Merced County Association of Governments (MCAG) for the
Period of August 1, 2020 Through July 31, 2030

REPORT IN BRIEF

Considers approving a resolution between the Merced County Association of Governments (MCAG) and the City of Merced to continue to participate in the Abandoned Vehicle Abatement program (AVA) for an additional 10 year period. (See attachment 1)

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving **Resolution 2019-45**, a Resolution of the City Council of the City of Merced, California, establishing service authority for abandoned vehicle abatement; and,
- B. Authorizing the City Manager or the Assistant City Manager to execute the agreement; and,
- C. Authorizing the Finance Officer to make the appropriate budget adjustments.

ALTERNATIVES

- 1. Approve, as recommended by staff; or
- 2. Approve, subject to other than recommended by staff; or
- 3. Deny; or,
- 4. Refer to staff for a reconsideration of specific items; or,
- 5. Continue to a future City Council meeting.

AUTHORITY

Merced Municipal Code 8.34, "Vehicle Abatement" California Vehicle Code 22710

CITY COUNCIL PRIORITIES

As provided for in the 2019-20 Adopted Budget

DISCUSSION

The Merced County Association of Governments (MCAG) has contacted the City of Merced

File #: 19-402 Meeting Date: 9/3/2019

regarding an extension of the abandoned vehicle abatement program (AVA). Merced County Association of Governments (MCAG) indicated that there is an expressed interest in continuation of this program.

Section 22710 of the California Vehicle Code (CVC) allows counties to form a Service Authority for the "abatement, removal, or disposal as a public nuisance of any abandoned, wrecked, dismantled, or inoperative vehicle ... from private or public property". Section 22710 allows for the imposition of an annual one-dollar (\$1.00) vehicle registration fee on all vehicles registered in Merced County, including city jurisdictions.

Continuation of the Service Authority, imposition of the one-dollar registration fee, and adoption of the Plan will require a two-thirds vote by the Board of Supervisors, and a vote in favor by the majority of the cities having a majority of the incorporated population. The Abandoned Vehicle Abatement Program Plan requires each participating jurisdiction adopt an ordinance consistent with sections 22660 and 22661 of the California Vehicle Code (CVC) and that the plan provide an estimate of the number of vehicles to be abated on a county wide basis.

In accordance with section 22710(d)(6) of the California Vehicle Code (CVC), the funds generated via the vehicle registration fee will be disbursed quarterly with 50% of those funds being allocated to a jurisdiction based on the percentage of vehicles abated by that jurisdiction out of the total number of abandoned vehicles abated by all jurisdictions. Forty percent of the funds will be disbursed based on population and the remaining 10%.will be divided evenly among the seven jurisdictions.

The Merced City Attorney's Office has updated section 8.34 of the Merced Municipal Code so the ordinance will remain consistent with Sections 22660 and 22651 of the California Vehicle Code (CVC)

IMPACT ON CITY RESOURCES

This program has been successful for the Police Department and Code Enforcement as an additional tool in abating blight from properties as it relates to abandoned or dismantled vehicles. This program allows a funding stream to compensate the City of Merced for the time taken to address and abate qualifying vehicles. The self-funding nature of this program places minimal impact on city resources, and in fact, has proven to be a valuable tool in the effort reduce blight and unsafe conditions.

ATTACHMENTS

- 1. Merced County HR2043 AVA Resolution
- 2. Merced Municipal Code Ordinance Adopted July 21, 2008
- 3. Resolution 2008-54 adopted July 7, 2008
- 4. Merced Municipal Code 8.34
- California Vehicle Code 22710
- 6. Resolution 2019-45

BEFORE THE BOARD OF SUPERVISORS COUNTY OF MERCED, STATE OF CALIFORNIA

In the Matter of				
MERCED COUNTY ABANDONED) VEHICLE ABATEMENT SERVICE) AUTHORITY PLAN)	RESOLUTION NO			
WHEREAS , Sections 9250.7 and 22710 California Vehicle Code provides for the establishment of a Service Authority for abandoned vehicle abatement if the Board of Supervisors of the county and a majority of the cities within the county having a majority of the population adopt resolutions providing for the establishment of the Authority; and,				
WHEREAS , the Board of Supervisors of the County of Merced finds that abandoned, inoperable, wrecked, dismantled vehicles or parts thereof pose a health and safety hazard and are found to be public nuisances: and,				
WHEREAS , the Board of Supervisors finds that an Abandoned Vehicle Abatement Program is needed to provide for the proper removal and disposal of abandoned vehicles: and,				
WHEREAS , the Merced County Abandoned Vehicle Abatement Service Authority will have the responsibility for implementing an abandoned vehicle removal program in Merced County; and,				
	bandoned Vehicle Abatement plan identifies the Merced hing Board as the Board of Directors for the Merced County hority.			
hereby requests that the Service Authorit	VED , that the Board of Supervisors of the County of Merced y for abandoned vehicle abatement be reestablished in Section 22710 of the California Vehicle Code for the period			
hereby certify that the foregoing resolution	of the Board of Supervisors of the County of Merced, do was regularly introduced, passed, and adopted by said the 30th day of July, 2019 by the following vote:			
SUPERVISORS:				
AYES:				
NOES:				
NOT PRESENT:				
WITNESS my hand and the Seal of t	his Board this day of			
	JAMES L. BROWN, Clerk			

Deputy

ORDINANCE NO. 2315

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING CHAPTER 8.34, "VEHICLE ABATEMENT" TO THE MERCED MUNICIPAL CODE

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

SECTION 1. AMENDMENT TO CODE. Chapter 8.34, "Vehicle Abatement" of the Merced Municipal Code is hereby amended to read as follows:

"CHAPTER 8.34 ABANDONED VEHICLE ABATEMENT

Sections:

8.34.010	General Abandoned Vehicles as
	Nuisances.
8.34.020	Definitions.
8.34.030	Exceptions.
8.34.040	Nonexclusivity of Regulation.
8.34.050	Officer Designated.
8.34.060	Authority of Private Contractor.
8.34.070	Administration Costs.
8.34.080	Authority of Vehicle Abatement Officer.
8.34.090	Abatement Notice of Intention.
8.34.100	Public Hearing-Requested.
8.34.110	Public Hearing-Procedure, Action.
8.34.120	Vehicle Disposal.
8.34.130	Notice to Department of Motor Vehicles.
8.34.140	Cost Recovery.
8.34.150	Act of Abandonment-Infraction.
8.34.160	Refusal to Abate-Infraction.
8.34.170	Constitutionality.

8.34.010 General Abandoned Vehicles as Nuisances.

In addition to and in accordance with the determination made and the authority granted by the State of California under Section 22660 of the California Vehicle Code (VC) to remove abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof as public nuisances, the City Council makes the following findings and declarations:

The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof on private or public property, including highways, creates a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects, to be injurious to the health, safety, and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof, on private or public property, except as expressly permitted in this Chapter, constitutes a public nuisance which may be abated as such in accordance with the provisions of this Chapter.

8.34.020 Definitions. As used in this Chapter, the following words and phrases are defined as set out in this Section:

- A. 'Highway' means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.
- B. 'Owner of the land' means the owner of the land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.
- C. 'Owner of the vehicle' means the last registered owner and legal owner of record.

D. 'Vehicle' means a device by which any person or property may be propelled, moved, or drawn upon a highway except a device moved by human power or used exclusively upon stationary rails or tracks.

8.34.030 Exceptions. This Chapter shall not apply to:

- A. A vehicle, or part thereof, which is completely enclosed within a building in a lawful manner where it is not visible from the highway or other public or private property;
- B. A vehicle, or part thereof, which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or a junkyard.
- C. Nothing in this section authorizes the maintenance of a public or private nuisance as defined under provision of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this Chapter.
- **8.34.040** Nonexclusivity of Regulation. This Chapter is not the exclusive regulation of abandoned, wrecked, dismantled, or inoperative vehicles within the city and/or county. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore or hereafter enacted by this city/county, the state, or any other legal entity or agency having jurisdiction.
- **8.34.050 Officer Designated**. Except as otherwise provided in this Chapter, the provisions of this Chapter shall be administered and enforced by the vehicle abatement officer as designated by the City Manager or designated agency head responsible for abandoned vehicle abatement operations in the designated city and/or county. In the enforcement of this Chapter, such

officers and deputies may enter upon private or public property to examine a vehicle, or parts thereof, obtain information as to the identity of a vehicle, and remove or cause the removal of a vehicle or part thereof declared to be a nuisance pursuant to this Chapter.

8.34.060 Authority of Private Contractor. When the City Council has contracted with or granted a franchise to any person or persons to remove vehicles pursuant to this Chapter, such person or persons shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this Chapter.

8.34.070 Administration Costs. The City Council shall, from time to time, determine and fix an amount to be assessed as administrative costs (excluding the actual cost of removal of any vehicle or part thereof) under this Chapter.

8.34.080 Authority of Vehicle Abatement Officer.

Upon discovering the existence of an abandoned, wrecked, dismantled or inoperable vehicle, or parts thereof, on private property or public property within the city/county, the vehicle abatement officer shall have the authority to cause the abatement and removal thereof in accordance with the procedure described in this Chapter.

8.34.090 Abatement Notice of Intention.

A. A ten (10) day notice of intention to abate and remove the vehicle, or parts thereof, as a public nuisance shall be mailed by registered or certified mail to the owner of the land as shown on last equalized assessment roll and to the last registered and legal owner of record, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following forms:

"NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE" (Name and address of owner of the land)

"As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to (section of ordinance or municipal code) has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismantled, or inoperative vehicle registered to, license or VIN number, which constitutes a public nuisance pursuant to the provision of (ordinance or municipal code Chapter number)."

"You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within ten (10) days from the date of mailing of this notice, and upon your failure to do so the same will be abated and removed by the City and the costs thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located."

"As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the City Council of the City of Merced within such ten (10) day period, the City Manager shall have the authority to abate and remove said vehicle (or said parts of a vehicle) as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such ten (10) day period denying responsibility for the presence of said vehicle (or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be construed as a request

for a hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the vehicle or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing."

NOTICE MAILED:	·	
City Manager City of Merced		

"NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE" (Name and address of last registered and/or legal owner of record of vehicle - notice should be given to both if different.)

"As the last registered (and/or legal) owner of record of (description of vehicle - make, model, license, etc.), you are hereby notified that the undersigned pursuant to (section of ordinance or municipal code) has determined that said vehicle (or parts of a vehicle) exists as an abandoned, wrecked, dismantled, or inoperative vehicle at (describe location on public or private property) and constitutes a public nuisance pursuant to the provision of (ordinance or municipal code chapter number)."

"You are hereby notified to abate said nuisance by removing said vehicle (or said parts of a vehicle) within ten (10) days from the date of the mailing of this notice."

"As the registered (and/or legal) owner of record of said vehicle (or said parts of a vehicle), you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing or may submit a sworn written statement denying

responsibility for the presence of the vehicle on the land, with his or her reasons for such denial, in lieu of appearing. If such request is not received by the City Council of the City of Merced within such ten (10) day period, the Chief of Police shall have the authority to abate and remove said vehicle (or said parts of a vehicle) without a hearing."

Notice Mailed _	
City Manager	
City of Merced	

- B. A notice of intention to abate shall not be required if (1) the property owner and the owner of the vehicle have signed releases authorizing removal and waive further interest in the vehicle or part thereof, or (2) all the following conditions are satisfied:
 - (1) The vehicle or part thereof is inoperable due to the absence of a motor, transmission, or wheels and is incapable of being towed;
 - (2) The vehicle or part thereof is valued at less than three hundred dollars (\$300.00) by the Police Chief of the City of Merced or his/her designee;
 - (3) The Department of Building and Safety has determined that the vehicle or part thereof is a public nuisance presenting an immediate threat to public health or safety;
 - (4) The property owner has signed a release authorizing the removal and waiving further interest in the vehicle or part thereof; and

- (5) The vehicle is located upon a parcel that is either zoned for agricultural use or is not improved with a residential structure containing one or more dwelling units.
- C. If a vehicle is removed pursuant to subdivision (2), prior to final disposition, the registered or legal owner shall be notified of the intent to dispose of the vehicle or parts thereof. If the vehicle or part thereof is not claimed and removed from the scrap-yard, automobile dismantler's yard or public disposal area within twelve (12) days after the notice to dispose of vehicle is mailed, final disposition may proceed.
- 8.34.100 Public Hearing Requested. Upon request by the owner of the vehicle or owner of the land received by the city's/county's vehicle abatement officer within ten (10) days after the mailing of the notices of intention to abate and remove, a public hearing shall be held by the Enforcement Hearing Officer on the question of abatement and removal of the vehicle, or parts thereof, as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of the administrative costs and cost of removal of the vehicle, or parts thereof, against the property on which it is located.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his/her land within such ten (10) day period, said statement shall be construed as a request for a hearing, which does not require his/her presence. Notice of the hearing shall be mailed, by registered mail, at least ten (10) days before the hearing to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within said ten (10) days after mailing of the notice of intention to abate and remove, the city/county shall have the authority to abate and

remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing.

8.34.110 Public Hearing - Procedure Action. All hearings under this Chapter shall be held before the Enforcement Hearing Officer, which shall hear all facts and testimony deemed pertinent. Said facts and testimony may include testimony on the condition of the vehicle, or part thereof, and the circumstances concerning the vehicle's location on the private property or public property. The Enforcement Hearing Officer shall not be limited by the technical rules of evidence. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with reasons for such denial.

The Enforcement Hearing Officer may impose such conditions and take such other action as it deems appropriate under the circumstances to carry out the purpose of this Chapter. This may delay the time for removal of the vehicle, or part thereof, if, in the opinion of the hearing officer, the circumstances justify the delay. At the conclusion of the public hearing, the Enforcement Hearing Officer) may find that a vehicle, or part thereof, has been abandoned, wrecked, dismantled or is inoperative on private or public property, and by resolution order the same removed from the property as a public nuisance and disposed of as provided in this Chapter and determine the administrative costs and the cost of removal to be charged against the owner of the parcel of land on which the vehicle, or part thereof, is located. The order requiring removal shall include a description of the vehicle, or part thereof, and the correct identification number and license number of the vehicle, if available at the site.

If it is determined at the hearing that the vehicle was placed on the land without the consent of the land owner and that (s)he has not subsequently acquiesced in its presence, the Enforcement Hearing Officer shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such land owner.

If an interested party makes a written presentation to the Enforcement Hearing Officer, but does not appear, (s)he shall be notified in writing of the decision.

8.34.120 Vehicle Disposal. Five (5) days after adoption of the order declaring the vehicle or parts thereof to be a public nuisance or five (5) days from the date of mailing of notice of the decision, as required by Section 8.34.110, whichever date is later, the vehicle or parts thereof may be disposed of by removal to a scrapyard or automobile dismantler's yard. After a vehicle has been removed, it shall not thereafter be reconstructed or made operable unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to 5004 VC, in which case the vehicle may be reconstructed or made operable.

8.34.130 Notice to Department of Motor Vehicles.

Within five (5) days after the date of removal of the vehicle or parts thereof, notice shall be given to the Department of Motor Vehicles by the persons authorized to remove the vehicle identifying the vehicle or parts thereof removed. At the same time there shall be transmitted to the Department of Motor Vehicles evidence of registration available, including registration certificates, certificates of title, and license plates.

8.34.140 Cost Recovery. If the administrative costs and the costs of removal which are charged against the owner of a parcel of land pursuant to Section 8.34.110 are not paid within thirty (30) days of the date of the order, such

costs shall be assessed against the parcel of land pursuant to Government Code Section 25845 or 38733.5 and shall be transmitted to the tax collector for collection. Said assessment shall have the same priority as other county taxes.

8.34.150 Act of Abandonment - Infraction. It is unlawful and an infraction for any person to abandon, store, leave, or permit the abandonment, storing, or leaving of any licensed or unlicensed vehicle or parts thereof which is abandoned, wrecked, dismantled or inoperative upon any private property or public property, including highways, within the City for a period in excess of seventy-two (72) or more consecutive hours unless such vehicle or parts thereof is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property, or unless such vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer or a junkyard.

8.34.160 Refusal to Abate - Infraction. It is unlawful and an infraction for any person to fail or refuse to remove an abandoned, wrecked, dismantled, or inoperative vehicle or part thereof, or refuse to abate such nuisance when ordered to do so in accordance with the abatement provisions of this Chapter or state law, where such state law is applicable.

8.34.170 Constitutionality. Should any section, subsection, paragraph, clause, or phrase of this Chapter for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Chapter."

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 copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the <u>7th</u> day of <u>July</u>, 2008, and was passed and adopted at a regular meeting of said City Council held on the <u>21st</u> day of <u>July</u>, 2008, by the following called vote:

AYES: Cou

Council Members: SANDERS, CORTEZ, CARLISLE,

GABRIAULT-ACOSTA, SPRIGGS, WOOTEN

NOES:

Council Members: LOR

ABSTAIN:

Council Members: NONE

ABSENT:

Council Members: NONE

APPROVED:

Elle Worten Mayor ATTEST:

(SEAL)

JAMES G. MARSHALL, CITY CLERK

Deputy City Clerk



APPROVED AS TO FORM:

S. logac localula 6-24-08
City Attorney Date

PROOF OF PUBLICATION

(2015.5 C.C.P) **Proof of Publication of**

STATE OF CALIFORNIA)

COUNTY OF MERCED

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the aboveentitled matter. I am the printer foreman or principal clerk of The Merced County Times, a newspaper of general circulation, printed and published in the City of Merced, County of Merced, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Merced, State of California, under the date of December 14, 1999, Case Number 143600; that the notice, of which the annexed is a printed copy has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

July 24, 2008

Ordinance No. 2315

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: July 24, 2008

Proof of Publication - Merced County Times, Box 772, Merced, Adjudged a newspaper of general circulation by c

This space is for the County Clerk's Filing Stamp

Copy of notice har

LEGAL# 4429 ORDINANCE NO. 2315 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED. CALIFORNIA, AMENDING CHAPTER 8.34. VEHICLE ABATEMENT" TO THE MERCED MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS: SECTION 1. AMENDMENT TO CODE. Chapter 8.34, "Vehicle Abatement" of the Merced Municipal Code is hereby amended to read as follows:

> "CHAPTER 8.34 **ABANDONED VEHICLE ABATEMENT**

Sections:

8.34.010 General Abandoned Vehicles as Nuisances

8.34.020 Definitions.

8.34.030 Exceptions.

8.34.040 Nonexclusivity of Regulation

8.34.050 Officer Designated.

8.34.060 Authority of Private Contractor. 8.34.070 Administration Costs.

8.34.080 Authority of Vehicle Abatement

Officer.

8.34.090 Abatement Notice of Intention. 8:34.100 Public Hearing- Requested.

8.34.110 Public Hearing-Procedure, Action.

8.34.120 Vehicle Disposal.

8.34.130 Notice to Department of Motor Vehicles

8.34.140 Cost Recovery.

8.34.150 Act of Abandonment-Infraction.

8.34.160 Refusal to Abate-Infraction

8.34.170 Constitutionality.

8.34.010 General Abandoned Vehicles as Nuisances

In addition to and in accordance with the determination made and the authority granted by the State of California under Section 22660 of the California Vehicle Code (VC) to remove abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof as pub-

lic nuisances, the City Council makes the fol-

lowing findings and declarations: The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof on private or public property, including highways, creates a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety ofminors, to create a harborage for rodents and insects, to be injurious to the health, safety, and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vahicle or parts thereof, on private or public property, except as expressly permitted in this Chapter, constitutes a public nuisance which may be abated as such in accordance with the provisions ofthis Chapter.

8.34,020 Definitions, As used in this Chapter,

433

MEMORANDUM

DATE:

July 22, 2008

AGENDA ITEM: M-5

TO:

Deneen Proctor, Director of Support Services

FROM:

James G. Marshall, City Manager

RE:

Ordinance - Dealing with Vehicle Abatement

On Monday, July 21, 2008, the City Council introduced for second reading and adopted Ordinance No. 2315— An Ordinance of the City Council of the City of Merced, California, amending Chapter 8.34, "Vehicle Abatement" to the Merced Municipal Code.

Please ensure that the ordinance is published and the appropriate departments notified for implementation.

James G. Marshall City Manager

JGM/dw:Proctor

CC:

Greg Diaz

Brad Grant

Russ Thomas Dave Gonzalves

RESOLUTION NO. 2008-_54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, ESTABLISHING SERVICE AUTHORITY FOR ABANDONED VEHICLE ABATEMENT

WHEREAS, Sections 9250.7 and 22710 California Vehicle Code provides for the establishment of a Service Authority for abandoned vehicle abatement if the City Council/Board of Supervisors of the County and the majority of the cities within the county having a majority of the population adopt resolutions providing for the establishment of the Authority; and,

WHEREAS, the City Council of the City of Merced finds that abandoned, inoperable, wrecked, dismantled vehicles or parts thereof pose a health and safety hazard and are found to be public nuisances; and,

WHEREAS, the Council finds that an Abandoned Vehicle Abatement Program is needed to provide for the proper removal and disposal of abandoned vehicles to assist law enforcement and code enforcement personnel in abatement of abandoned vehicles; and,

WHEREAS, the County Abandoned Vehicle Abatement Service Authority will have the responsibility for implementing an abandoned vehicle removal program in Merced County; and,

WHEREAS, the Merced County Abandoned Vehicle Abatement Plan identifies the Merced County Association of Governments Governing Board as the Board of Directors for the Merced County Abandoned Vehicle Abatement Service Authority.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council requests that a Service Authority for abandoned vehicle abatement be established in County pursuant to the provisions of Section 22710 of the California Vehicle Code.

SECTION 2. The City Council directs that member of each participating agency shall serve as the Service Authority for abandoned vehicle abatement in the County of Merced.

SECTION 3. The City Council approves the Vehicle Abatement Plan of the Abandoned Vehicle Abatement Authority of the County of Merced and to impose a One Dollar (\$1.00) vehicle registration fee. The fee imposed by the Authority shall remain in effect only for a period of ten (10) years from the inception of the date that the actual collection of the fees commences.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the _7th day of _____ 2008, by the following vote:

AYES:

Council Members: SANDERS, CORTEZ, CARLISLE,

GABRIAULT-ACOSTA, LOR, SPRIGGS, WOOTEN

NOES:

Council Members: NONE

ABSENT:

Council Members: NONE

ABSTAIN:

Council Members: NONE

APPROVED:

Mayor

ATTEST:

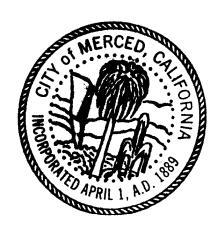
JAMES G. MARSHALL, CITY CLERK

BY:

Deputy City Clerk

Deputy City Clerk

(SEAL)



APPROVED AS TO FORM:

Abace below 3-2-08
City Attorney Date

MERCED COUNTY ABANDONED VEHICLE SERVICE AUTHORITY PLAN July 2008

1. SERVICE AUTHORITY:

Section 22710 of the California Vehicle Code (VC) provides for the establishment of a Service Authority for the abatement of abandoned vehicles. The parties to this Agreement are Merced County and the cities of Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced. These jurisdictions have elected to create and participate in the Merced County Abandoned Vehicle Abatement Service Authority as provided herein.

2. <u>PURPOSE</u>:

The purpose of this Agreement is to establish a Service Authority for the abatement of abandoned vehicles in Merced County pursuant to Section 22710 VC.

3. EFFECTVE DATE:

This Agreement becomes effective upon its approval by the county Board of Supervisors by twothirds vote, and a majority of the cities having a majority of the incorporated population within the county.

4. <u>BOARD OF DIRECTORS:</u>

The Directors of the Merced County Association of Governments Governing Board shall serve as the Board of Directors of the Service Authority.

5. **RESOLUTIONS**:

Copies of each participating city's and the county's resolution providing for the establishment of the Service Authority including imposition of the one dollar (\$1.00) registration fee, pursuant to the requirements of Sections 22710(a) and 9250.7(a) VC, are on file with the Authority, the California Highway Patrol (CHP), and the State Controller (SC).

6. ESTIMATE OF THE NUMBER OF ABANDONED VEHICLES:

As required by Section 22710(d)(2) VC, it is estimated that there are in excess of **4,000** abandoned vehicles located throughout Merced County. This figure is based on actual and estimated abandoned vehicle counts supplied by Authority participants.

7. ORDINANCES:

Each of the participating agencies have ordinances in place establishing procedures for the abatement, removal, and disposal, as public nuisances, of abandoned, wrecked, dismantled, or

inoperative vehicles, or parts thereof, from private or public property, including highways, in accordance with the requirements of Sections 22660 and 22661 VC. This includes ordinances developed for cost recovery pursuant to Sections 25845 or 38773.5 of the Government Code (GC), or assumption of the Service Authority, of costs associated with the enforcement of the ordinance.

8. DISPOSAL AND ENFORCEMENT STRATEGY:

Each of the participating agencies have abandoned vehicle abatement processing formats or Standard Operating Procedures in place for the enforcement of Sections 22523(a)(b) VC. Statutory authority for the removal of abandoned vehicles is Section 22669 VC, as well as local ordinances adopted for the removal and disposal as public nuisances of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof from private or public property.

In accordance with Sections 22671 and 22851.3 VC, each member may maintain a contractual agreement with a licensed auto dismantler and/or qualified tow company for the removal and disposal of abandoned vehicles and may employ such contractors for the abatement, removal, and disposal as public nuisances of: abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof from private or public property. Abated vehicles or parts thereof shall be disposed of by removal to a dismantler or to a scrap yard for processing as scrap, unless the vehicle qualifies for restoration pursuant to Section 5004 VC.

9. COST RECOVERY STRATEGY:

- a. General: Participating agencies shall utilize the provisions of Section 22523 VC to effect partial recovery of costs incurred in the removal of an abandoned vehicle. Additionally, member cities have enacted ordinances relative to recovery in accordance with Sections 25845 or 38773.5 GC.
- b. <u>Funding System</u>: It is the intent of the abandoned vehicle abatement participants to recover the cost of abandoned vehicle abatement activities from the Service Authority.
 - 1. <u>Definition of Costs Recoverable from the Authority</u>: These costs include program administration, vehicle removal, and disposal pursuant to Sections 22710(c)(1) and 22710(c)(2) VC.
 - 2. <u>Cost Accounting and Recovery Required</u>: Each abandoned vehicle abatement participant will maintain records of the costs incurred while participating in the Abandoned Vehicle Abatement Program and shall attempt recovery of those costs.
 - 3. Audit. On or before January 1, 2010, and biennially thereafter, the Authority shall have a financial audit of the Authority conducted by a qualified independent third party to ensure that funds are being spent in compliance with Sections 9250.7 and 22710 VC.

4. Disbursement of Funds:

- a. The money received by an Authority pursuant to Section 9250.7 VC shall be distributed to the cities and the county for their use in accordance with Section 22710(d)(6) VC.
- b. The funds will be disbursed quarterly, as received, and based on the following formula: 50% of funds will be allotted to an agency based on the percentage of the number of vehicles abated by the agency, out of the total number of abandoned vehicles abated by all member agencies. Per Section 22710 VC, the remaining 50% is to be distributed based on population and geographic area as determined by the Authority. As per this Authority, distribution will be as follows: 40% of the total funds collected will be distributed per capita with the remaining 10% to be shared evenly by all seven participating agencies.
- c. In the event a particular jurisdiction does not claim the full amount of its quarterly allotment, the "surplus funds" may be accumulated for the remainder of the fiscal year in which they were received. "Surplus funds" are those funds allotted to a jurisdiction in a fiscal quarter of the same fiscal year but are not claimed for that quarter.
- d. Surplus funds must be encumbered within 45 days of the close of the fiscal year in which the funds were received. Failure to do so will result in those funds being redistributed to other members of the Authority having spent more funds on eligible activities than they were allotted. Funds will be redistributed based on the percentage of vehicles abated by an agency, out of the total number of abandoned vehicles abated by all member agencies having spent more on eligible activities than they received.
- e. Jurisdictions that have encumbered surplus funds will have 18 months to expend the encumbered funds. Failure to do so will result in those funds being redistributed to other members of the Authority having spent more funds on eligible activities than they received from the Authority. The redistribution will be based on the percentage of vehicles abated by the agency out of the total number of abandoned vehicles abated by all agencies having spent more funds on eligible activities than they received from the Authority.
- f. The quarterly disbursement of funds to each participating jurisdiction shall be based on the fiscal year beginning in July.
- g. Each member agency will be required to submit a quarterly report to the Authority within 30 days after the end of the quarter. (Reports will be submitted during the months of January, April, July, and October.)

Additionally, member agencies will also be required to submit an annual report to the Authority within 45 days after the end of the fiscal year.

Failure by an agency to submit its quarterly report in a timely manner may result in a delay in the allocations to ALL agencies. A late annual report may result in the Authority's annual report to the State Controller's Office being late, thus suspending the collection of the one-dollar (\$1.00) vehicle registration fee for an entire year.

Both the quarterly and annual reports will contain the following information:

- 1. The total expenditures by the jurisdiction for the previous period.
- 2. The total number of vehicles abated during the previous period.
- 3. The number of notices to abate issued to vehicles during the previous period.
- 4. The number of vehicles disposed pursuant to an ordinance adopted pursuant to Section 22710 during the previous period.
- 5. The total expenditures by the jurisdiction for towing and storage of abandoned vehicles during the previous period.
- 6. Costs recovered by the jurisdiction under Section 22850.5 of the Vehicle Code or Sections 25845 or 38773.5 of the Government Code.
- h. The treasurer of the Authority is the Merced County Treasurer and their office will receive any funds distributed to the Authority by the SCO. The funds shall be disbursed, including interest thereon, less any expenses resulting from contractual agreements to conduct audits, to each member jurisdiction as authorized by the board and by the terms of this Plan. The disbursements will be made by the Merced County Auditor-Controller from claims submitted by the Authority. The Service Authority's administrator shall report all receipts and disbursements to the Authority on a quarterly basis.
- i. Any funds not expended or encumbered within 90 days of the close of the fiscal year in which the funds were received and the amount of those funds exceeds the amount expended by the Authority for the abatement of abandoned in the previous fiscal year, the one dollar (\$1.00) registration fee shall be suspended for one year, commencing the following January 1 in accordance with Section 9250.7(b) VC and with terms of this Plan.

5. <u>Debts and Liabilities</u>. The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of any member jurisdictions.

10. <u>REPORTING REQUIREMENTS:</u>

Service Authority, established pursuant to the provisions of Sections 9250.7 and 22710 VC, submit on an annual basis data relative to the operation of its Abandoned Vehicle Abatement Program. The SCO has prepared Annual Status Report forms (Annex A) for the reporting requirements of the Service Authorities and jurisdictions. An Authority shall submit their reports on these forms to the SCO. These annual fiscal year-end reports shall contain the required reporting information to satisfy the Legislature's intent of appropriate fiscal controls. These annual fiscal year-end reports shall be submitted on or before October 31st of each year to ensure ongoing funding from the SCO and meet the mandated legislative requirements. Should the Authority fail to submit the report by October 31 of each year, collection of the one dollar (\$1.00) shall be suspended for one year commencing on July 1 following the Controller's determination. The report will contain the following information:

- a. The total revenues received by the Authority for the previous fiscal year.
- b. The total expenditures by the Authority for the previous fiscal year.
- c. The total number of vehicles abated during the previous fiscal year.
- d. The average cost of abatement during the previous fiscal year.
- e. Any additional, unexpected fee revenues for the Authority for the previous fiscal year.
- f. The number of notices to abate issued to vehicles during the previous fiscal year.
- g. The number of vehicles disposed pursuant to an ordinance adopted pursuant to Section 22710 during the previous fiscal year.
- h. The total expenditures by the Authority for towing and storage of abandoned vehicles during the previous fiscal year.

Merced Municipal Code 8.34

8.34.010 - General abandoned vehicles as nuisances.
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In addition to and in accordance with the determination made and the authority granted by the state of California under Section 22660 of the California Vehicle Code (VC) to remove abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof as public nuisances, the city council makes the following findings and declarations:
The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof on private or public property, including highways, creates a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects, to be injurious to the health, safety, and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof, on private or public property, except as expressly permitted in this chapter, constitutes a public nuisance which may be abated as such in accordance with the provisions of this chapter.
(Ord. 2315 § 1 (part), 2008).
8.34.020 - Definitions.
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As used in this chapter, the following words and phrases are defined as set out in this section:
"Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.
"Owner of the land" means the owner of the land on which the vehicle, or parts thereof, is located, as

"Owner of the vehicle" means the last registered owner and legal owner of record.

shown on the last equalized assessment roll.

"Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway except a device moved by human power or used exclusively upon stationary rails or tracks.

(Ord. 2315 § 1 (part), 2008).

8.34.030 - Exceptions.

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This chapter shall not apply to:

A.

A vehicle, or part thereof, which is completely enclosed within a building in a lawful manner where it is not visible from the highway or other public or private property;

B.

A vehicle, or part thereof, which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or a junkyard;

C.

Nothing in this section authorizes the maintenance of a public or private nuisance as defined under provision of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this chapter.

(Ord. 2315 § 1 (part), 2008).

8.34.040 - Nonexclusivity of regulation.

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This chapter is not the exclusive regulation of abandoned, wrecked, dismantled, or inoperative vehicles within the city and/or county. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore or hereafter enacted by this city/county, the state, or any other legal entity or agency having jurisdiction.

(Ord. 2315 § 1 (part), 2008).

8.34.050 - Officer designated.
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Except as otherwise provided in this chapter, the provisions of this chapter shall be administered and enforced by the vehicle abatement officer as designated by the city manager or designated agency head responsible for abandoned vehicle abatement operations in the designated city and/or county. In the enforcement of this chapter, such officers and deputies may enter upon private or public property to examine a vehicle, or parts thereof, obtain information as to the identity of a vehicle, and remove or cause the removal of a vehicle or part thereof declared to be a nuisance pursuant to this chapter.
(Ord. 2315 § 1 (part), 2008).
8.34.060 - Authority of private contractor.
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When the city council has contracted with or granted a franchise to any person or persons to remove vehicles pursuant to this chapter, such person or persons shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this chapter.
(Ord. 2315 § 1 (part), 2008).
8.34.070 - Administration costs.
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The city council shall, from time to time, determine and fix an amount to be assessed as administrative

costs (excluding the actual cost of removal of any vehicle or part thereof) under this chapter.

(Ord. 2315 § 1 (part), 2008).

8.34.080 - Authority of vehicle abatement officer.

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Upon discovering the existence of an abandoned, wrecked, dismantled or inoperable vehicle, or parts thereof, on private property or public property within the city/county, the vehicle abatement officer shall have the authority to cause the abatement and removal thereof in accordance with the procedure described in this chapter.

(Ord. 2315 § 1 (part), 2008).

8.34.090 - Abatement notice of intention.

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A.

A ten (10) day notice of intention to abate and remove the vehicle, or parts thereof, as a public nuisance shall be mailed by registered or certified mail to the owner of the land as shown on last equalized assessment roll and to the last registered and legal owner of record, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following forms:

"NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE" (Name and address of owner of the land)

"As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to (section of ordinance or municipal code) has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismantled, or inoperative vehicle registered to, license or VIN number, which constitutes a public nuisance pursuant to the provision of (ordinance or municipal code Chapter number)."

"You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within ten (10) days from the date of mailing of this notice, and upon your failure to do so the

same will be abated and removed by the City and the costs thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located."

"As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the City Council of the City of Merced within such ten (10) day period, the City Manager shall have the authority to abate and remove said vehicle (or said parts of a vehicle) as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such ten (10) day period denying responsibility for the presence of said vehicle (or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be construed as a request for a hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the vehicle or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing."

NOTICE MAILED:	
City Manager	
City of Merced	

"NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE"

(Name and address of last registered and/or legal owner of record of vehicle - notice should be given to both if different.)

"As the last registered (and/or legal) owner of record of (description of vehicle - make, model, license, etc.), you are hereby notified that the undersigned pursuant to (section of ordinance or municipal code) has determined that said vehicle (or parts of a vehicle) exists as an abandoned, wrecked, dismantled, or inoperative vehicle at (describe location on public or private property) and constitutes a public nuisance pursuant to the provision of (ordinance or municipal code chapter number)."

"You are hereby notified to abate said nuisance by removing said vehicle (or said parts of a vehicle) within ten (10) days from the date of the mailing of this notice."

"As the registered (and/or legal) owner of record of said vehicle (or said parts of a vehicle), you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing or may submit a sworn written statement denying responsibility for the presence of the vehicle on the land, with his or her reasons for such denial, in lieu of appearing. If such request is not received by the City Council of the City of Merced within such ten (10) day period, the Chief of Police shall have the authority to abate and remove said vehicle (or said parts of a vehicle) without a hearing."

Notice Mailed
City Manager City of Merced
B.

A notice of intention to abate shall not be required if: (1) the property owner and the owner of the vehicle have signed releases authorizing removal and waive further interest in the vehicle or part thereof, or (2) all the following conditions are satisfied:

a.

The vehicle or part thereof is inoperable due to the absence of a motor, transmission, or wheels and is incapable of being towed;

b.

The vehicle or part thereof is valued at less than three hundred dollars (\$300.00) by the police chief of the city of Merced or his/her designee;

C.

The department of building and safety has determined that the vehicle or part thereof is a public nuisance presenting an immediate threat to public health or safety;

d.

The property owner has signed a release authorizing the removal and waiving further interest in the vehicle or part thereof; and

e.

The vehicle is located upon a parcel that is either zoned for agricultural use or is not improved with a residential structure containing one (1) or more dwelling units.

C.

If a vehicle is removed pursuant to subsection (B)(2)(a) of this section, prior to final disposition, the registered or legal owner shall be notified of the intent to dispose of the vehicle or parts thereof. If the vehicle or part thereof is not claimed and removed from the scrap-yard, automobile dismantler's yard or public disposal area within twelve (12) days after the notice to dispose of vehicle is mailed, final disposition may proceed.

(Ord. 2315 § 1 (part), 2008).

8.34.100 - Public hearing requested.

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Upon request by the owner of the vehicle or owner of the land received by the city's/county's vehicle abatement officer within ten (10) days after the mailing of the notices of intention to abate and remove,

a public hearing shall be held by the enforcement hearing officer on the question of abatement and removal of the vehicle, or parts thereof, as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of the administrative costs and cost of removal of the vehicle, or parts thereof, against the property on which it is located.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his/her land within such ten (10) day period, said statement shall be construed as a request for a hearing, which does not require his/her presence. Notice of the hearing shall be mailed, by registered mail, at least ten (10) days before the hearing to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within said ten (10) days after mailing of the notice of intention to abate and remove, the city/county shall have the authority to abate and remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing.

(Ord. 2315 § 1 (part), 2008).

8.34.110 - Public hearing—Procedure action.

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All hearings under this chapter shall be held before the enforcement hearing officer, which shall hear all facts and testimony deemed pertinent. Said facts and testimony may include testimony on the condition of the vehicle, or part thereof, and the circumstances concerning the vehicle's location on the private property or public property. The enforcement hearing officer shall not be limited by the technical rules of evidence. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with reasons for such denial.

The enforcement hearing officer may impose such conditions and take such other action as it deems appropriate under the circumstances to carry out the purpose of this chapter. This may delay the time for removal of the vehicle, or part thereof, if, in the opinion of the hearing officer, the circumstances justify the delay. At the conclusion of the public hearing, the enforcement hearing officer may find that a vehicle, or part thereof, has been abandoned, wrecked, dismantled or is inoperative on private or public property, and by resolution order the same removed from the property as a public nuisance and disposed of as provided in this chapter and determine the administrative costs and the cost of removal to be charged against the owner of the parcel of land on which the vehicle, or part thereof, is located. The order requiring removal shall include a description of the vehicle, or part thereof, and the correct identification number and license number of the vehicle, if available at the site.

If it is determined at the hearing that the vehicle was placed on the land without the consent of the land owner and that he or she has not subsequently acquiesced in its presence, the enforcement hearing

officer shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such land owner.

If an interested party makes a written presentation to the enforcement hearing officer, but does not appear, (s)he shall be notified in writing of the decision.

(Ord. 2315 § 1 (part), 2008).

8.34.120 - Vehicle disposal.

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Five (5) days after adoption of the order declaring the vehicle or parts thereof to be a public nuisance or five (5) days from the date of mailing of notice of the decision, as required by Section 8.34.110, whichever date is later, the vehicle or parts thereof may be disposed of by removal to a scrapyard or automobile dismantler's yard. After a vehicle has been removed, it shall not thereafter be reconstructed or made operable unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to 5004 VC, in which case the vehicle may be reconstructed or made operable.

(Ord. 2315 § 1 (part), 2008).

8.34.130 - Notice to department of motor vehicles.

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Within five (5) days after the date of removal of the vehicle or parts thereof, notice shall be given to the department of motor vehicles by the persons authorized to remove the vehicle identifying the vehicle or parts thereof removed. At the same time there shall be transmitted to the department of motor vehicles evidence of registration available, including registration certificates, certificates of title, and license plates.

(Ord. 2315 § 1 (part), 2008).

8.34.140 - Cost recovery.

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If the administrative costs and the costs of removal which are charged against the owner of a parcel of land pursuant to Section 8.34.110 are not paid within thirty (30) days of the date of the order, such costs shall be assessed against the parcel of land pursuant to Government Code Section 25845 or 38733.5 and shall be transmitted to the tax collector for collection. Said assessment shall have the same priority as other county taxes.

(Ord. 2315 § 1 (part), 2008).

8.34.150 - Act of abandonment—Infraction.

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It is unlawful and an infraction for any person to abandon, store, leave, or permit the abandonment, storing, or leaving of any licensed or unlicensed vehicle or parts thereof which is abandoned, wrecked, dismantled or inoperative upon any private property or public property, including highways, within the city for a period in excess of seventy-two (72) or more consecutive hours unless such vehicle or parts thereof is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property, or unless such vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer or a junkyard.

(Ord. 2315 § 1 (part), 2008).

8.34.160 - Refusal to abate—Infraction.

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It is unlawful and an infraction for any person to fail or refuse to remove an abandoned, wrecked, dismantled, or inoperative vehicle or part thereof, or refuse to abate such nuisance when ordered to do

so in accordance with the abatement provisions of this chapter or state law, where such state law is applicable.

(Ord. 2315 § 1 (part), 2008).

8.34.170 - Constitutionality.

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Should any section, subsection, paragraph, clause, or phrase of this chapter for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter.

(Ord. 2315 § 1 (part), 2008).

CALIFORNIA VEHICLE CODE 22710

VEHICLE CODE - VEH

DIVISION 11. RULES OF THE ROAD [21000 - 23336]

(Division 11 enacted by Stats. 1959, Ch. 3.)

CHAPTER 10. Removal of Parked and Abandoned Vehicles [22650 - 22856] (Chapter 10 enacted by Stats. 1959, Ch. 3.)

ARTICLE 1. Authority to Remove Vehicles [22650 - 22711]

(Article 1 enacted by Stats. 1959, Ch. 3.)

22710.

- (a) A service authority for the abatement of abandoned vehicles may be established, and a one dollar (\$1) vehicle registration fee imposed, in a county if the board of supervisors of the county, by a two-thirds vote, and a majority of the cities having a majority of the incorporated population within the county have adopted resolutions providing for the establishment of the authority and imposition of the fee. The membership of the authority shall be determined by concurrence of the board of supervisors and a majority vote of the majority of the cities within the county having a majority of the incorporated population.
- (b) The authority may contract and may undertake any act convenient or necessary to carry out a law relating to the authority. The authority shall be staffed by existing personnel of the city, county, or county transportation commission.
- (c) (1) Notwithstanding any other provision of law, a service authority may adopt an ordinance establishing procedures for the abatement, removal, and disposal, as a public nuisance, of an abandoned, wrecked, dismantled, or inoperative vehicle or part of the vehicle from private or public property; and for the recovery, pursuant to Section 25845 or 38773.5 of the Government Code, or assumption by the service authority, of costs associated with the enforcement of the ordinance. Cost recovery shall only be undertaken by an entity that may be a county or city or the department, pursuant to contract with the service authority as provided in this section.
- (2) (A) The money received by an authority pursuant to Section 9250.7 and this section shall be used only for the abatement, removal, or the disposal as a public nuisance of any abandoned, wrecked, dismantled, or inoperative vehicle or part of the vehicle from private or public property. The money received shall not be used to offset the costs of vehicles towed under authorities other than an ordinance adopted pursuant to paragraph (1) or when costs are recovered under Section 22850.5.
- (B) The money received by a service authority pursuant to Section 9250.7 and this section that are unexpended in a fiscal year may be carried forward by the service authority for the abandoned vehicle abatement program in the following fiscal year as agreed upon by the service authority and its member agencies.

- (d) (1) An abandoned vehicle abatement program and plan of a service authority shall be implemented only with the approval of the county and a majority of the cities having a majority of the incorporated population.
- (2) (A) The department shall provide guidelines for an abandoned vehicle abatement program. An authority's abandoned vehicle abatement plan and program shall be consistent with those guidelines, and shall provide for, but not be limited to, an estimate of the number of abandoned vehicles, a disposal and enforcement strategy including contractual agreements, and appropriate fiscal controls.
- (B) The department's guidelines provided pursuant to this paragraph shall include, but not be limited to, requiring each service authority receiving funds from the Abandoned Vehicle Trust Fund to report to the Controller on an annual basis pursuant to subdivision (c) of Section 9250.7, in a manner prescribed by the department, and pursuant to an approved abandoned vehicle abatement program.
- (C) A service authority may carry out an abandoned vehicle abatement from a public property after providing a notice as specified by the local ordinance adopted pursuant to Section 22660 of the jurisdiction in which the abandoned vehicle is located and that notice has expired.
- (3) After a plan has been approved pursuant to paragraph (1), the service authority shall, not later than August 1 of the year in which the plan was approved, submit it to the department for review, and the department shall, not later than October 1 of that same year, either approve the plan as submitted or make recommendations for revision. After the plan has received the department's approval as being consistent with the department's guidelines, the service authority shall submit it to the Controller.
- (4) Except as provided in subdivision (e), the Controller shall not make an allocation for a fiscal year, commencing on July 1 following the Controller's determination to suspend a service authority when a service authority has failed to comply with the provisions set forth in Section 9250.7.
- (5) A governmental agency shall not receive funds from a service authority for the abatement of abandoned vehicles pursuant to an approved abandoned vehicle abatement program unless the governmental agency has submitted an annual report to the service authority stating the manner in which the funds were expended, and the number of vehicles abated. The governmental agency shall receive that percentage of the total funds collected by the service authority that is equal to its share of the formula calculated pursuant to paragraph (6).
- (6) Each service authority shall calculate a formula for apportioning funds to each governmental agency that receives funds from the service authority and submit that formula to the Controller with the annual report required pursuant to paragraph (2). The formula shall apportion 50 percent of the funds received by the service authority to a governmental agency based on the percentage of vehicles abated by that governmental agency of the total number of abandoned vehicles abated by all member agencies, and 50 percent based on population and geographic area, as determined by the service authority. When the formula is first submitted to the Controller, and each time the formula is revised thereafter, the

service authority shall include a detailed explanation of how the service authority determined the apportionment between per capita abatements and service area.

- (7) Notwithstanding any other provision of this subdivision, the Controller may allocate to the service authority in the County of Humboldt the net amount of the abandoned vehicle abatement funds received from the fee imposed by that authority, as described in subdivision (b) of Section 9250.7, for calendar years 2000 and 2001.
- (e) A plan that has been submitted to the Controller pursuant to subdivision (d) may be revised pursuant to the procedure prescribed in that subdivision, including compliance with any dates described therein for submission to the department and the Controller, respectively, in the year in which the revisions are proposed by the service authority. Compliance with that procedure shall only be required if the revisions are substantial.
- (f) For purposes of this section, "abandoned vehicle abatement" means the removal of a vehicle from public or private property by towing or any other means after the vehicle has been marked as abandoned by an official of a governmental agency that is a member of the service authority.
- (g) A service authority shall cease to exist on the date that all revenues received by the authority pursuant to this section and Section 9250.7 have been expended.
- (h) In the event of a conflict with other provisions of law, this section shall govern the disbursement of money collected pursuant to this section and from the Abandoned Vehicle Trust Fund for the implementation of the abandoned vehicle abatement program.

(Amended by Stats. 2007, Ch. 389, Sec. 2. Effective January 1, 2008.)

RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, ESTABLISHING SERVICE AUTHORITY FOR ABANDONED VEHICLE ABATEMENT

WHEREAS, Sections 9250.7 and 22710 California Vehicle Code provides for the establishment of a Service Authority for abandoned vehicle abatement if the City Council/Board of Supervisors of the County and the majority of the cities within the county having a majority of the population adopt resolutions providing for the establishment of the Authority; and,

WHEREAS, the City Council of the City of Merced finds that abandoned, inoperable, wrecked, dismantled vehicles or parts thereof pose a health and safety hazard and are found to be public nuisances; and,

WHEREAS, the Council finds that an Abandoned Vehicle Abatement Program is needed to provide for the proper removal and disposal of abandoned vehicles to assist law enforcement and code enforcement personnel in abatement of abandoned vehicles; and,

WHEREAS, the County Abandoned Vehicle Abatement Service Authority will have the responsibility for implementing an abandoned vehicle removal program in Merced County; and,

WHEREAS, the Merced County Abandoned Vehicle Abatement Plan identifies the Merced County Association of Governments Governing Board as the Board of Directors for the Merced County Abandoned Vehicle Abatement Service Authority.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council requests that a Service Authority for abandoned vehicle abatement be established in County pursuant to the provisions of Section 22710 of the California Vehicle Code.

SECTION 2. The City Council directs that member of each participating agency shall serve as the Service Authority for abandoned vehicle abatement in the County of Merced.

SECTION 3. The City Council approves the Vehicle Abatement Plan of the Abandoned Vehicle Abatement Authority of the County of Merced and to impose a One Dollar (\$1.00) vehicle registration fee. The fee imposed by the Authority shall remain in effect from August 1, 2020 through July 30, 2030.

regul	PASSED AND A ar meeting held on	DOPTED by the City Couthe day of	ancil of the City of Merced at a 2019, by the following
	AYES:	Council Members:	
	NOES:	Council Members:	
	ABSENT:	Council Members:	
	ABSTAIN:	Council Members:	
			APPROVED:
			Mayor
ATTE STEV	EST: E CARRIGAN, CI	TY CLERK	
BY:_	Assistant/Deputy (City Clerk	
(SEA)			

APPROVED AS TO FORM:

Dep. City Attorney Date



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.6. Meeting Date: 9/3/2019

Report Prepared by: Venus Rodriguez, Finance Officer

SUBJECT: Approval of a Pooled Cash Loan Not to Exceed \$7,720,000 and Current Year
Payment Amount, in Order to Repay the Department of Finance (DOF) Based on the Approved
Settlement Agreement Related to the Dissolution of the City of Merced Redevelopment Agency

REPORT IN BRIEF

Considers approving a pooled cash loan not to exceed \$7,720,000 and current year payment amounts in order to repay the Department of Finance based on the approved Settlement Agreement related to the dissolution of the City of Merced Redevelopment Agency.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving a pooled cash loan not to exceed \$7,720,000; and,
- B. Approving the use of RDA residual in the amount of \$1,297,953 plus interest towards the first payment; and,
- C. Approving the use of \$500,000 from Fund 017 Development Services towards the first payment; and.
- D. Authorizing the City Manager or the Assistant City Manager to the execute all necessary documents; and,
- E. Authorizing the Finance Officer to make the necessary budget adjustments.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Refer to staff for reconsideration of specific items; or,
- 3. Deny.

AUTHORITY

Charter of the City Merced, Section 200.

City Council Approved Debt Policy and Continuing Disclosure Policy.

DISCUSSION

File #: 19-486 Meeting Date: 9/3/2019

The current City Council approved Debt Policy and Continuing Disclosure Policy allowing interfund borrowing or cash pooled loans for long term financing up to \$10 million. The purpose of leveraging a cash pooled loan is to reduce the cost of interest, debt issuance, and administration. The loan is required to pay interest based upon the earning rate of the City's investment pool.

Although the total repayment amount to the Department of Finance (DOF) is \$9,528,396, the proposed cash pooled loan is not to exceed \$7,720,000. The first payment of \$2,000,000 due on 10/1/19 is estimated to be made with a combination of Redevelopment Agency (RDA) residual and interest (\$1,308,396), Development Services funding (\$500,000), and the cash pooled loan (\$191,604).

The cash pooled loan agreement is proposed as a tiered not to exceed amount of \$7,720,000, amortized over 30 years with an interest rate of 2.22%, which is the annual average earnings rate of the City's investment pool for the last 12 months. Based on the accepted payment terms with DOF, staff will review annually available funding from other sources such as RDA residual or reimbursement and then only draw down the actual amount needed to make each payment. This allows for the most flexibility and will help to keep the interest amount as low as possible.

IMPACT ON CITY RESOURCES

Based on the average annual amount of RDA residual the City receives, it is projected that RDA residual will be available to repay the pooled cash loan. If the City were to receive less RDA residual than needed to make the scheduled loan payment based on the final amortization schedule then funding will be needed from the General Fund or the Revenue Stabilization Fund. Each annual payment to DOF for the next six years and any scheduled repayments to the cash pool will be included in the budget process.

ATTACHMENTS

- 1. Cash Pooled Loan Agreement
- 2. Settlement Agreement

POOLED CASH INTERFUND LOAN AGREEMENT

This Loan Agreement ("Agreement") is executed as of ________, 2019, between the City of Merced General Fund ("Borrower") and the City of Merced Pooled Cash Fund ("Lender"). Lender agrees to lend to Borrower, and Borrower agrees to repay to Lender an amount not to exceed the Principal Amount and interest accrued on the unpaid loan balance to fund the Due Diligence Review Obligations of the former RDA ("Other Funds") and City Housing Successor Agency Low and Moderate Income Housing Fund ("LMIHF"), in accordance with the following:

- Purpose of the Loan: To provide funds for use by Borrower or its designee, to fund the Settlement Agreement between the City and the Department of Finance, Attachment A, and to remit the Due Diligence Review ("DDR") Balance owed by the LMIHF and the former RDA pursuant to the settlement agreement. The loan shall account for borrowing between the Pooled Cash Fund and the General Fund, Fund No. 001 and shall not be available for appropriation except as provided for herein.
- 2 Principal Loan Amount: The loan will be a tiered loan based upon actual cash necessary to meet the payment obligation under the settlement agreement; however, in no event will the loan amount exceed Seven Million Seven Hundred Twenty Thousand and no/100 Dollars (\$7,720,000). The loan will be recorded as receivable to the Lender and payable to the Borrower.
- 3. Term of the Loan: The term of this loan shall begin on September 3, 2019. The outstanding loan balance is to be repaid no later than June 30, 2050.
- 4. Scheduled Payments: Borrower shall make annual payments beginning on June 1, 2020.
- 5 Rate of Interest: Interest shall accrue annually on June 30 on the outstanding loan balance at the City's Investment Earnings of 2.22%. Loan interest will be recorded as revenue to the Lender and expenditure to the Borrower.
- 6 General Provisions: This Agreement constitutes the full Agreement by and between the parties and no other representations have been made regarding the contents of this Agreement. This Agreement shall not be amended, modified, or altered in any respect unless such amendment, modification or alteration has been reduced to writing and executed by both parties.

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: Inuclea Colon Place City Attorney Date	
ACCOUNT DATA:	
BY:	
Verified by Finance Officer	

SETTLEMENT AGREEMENT

California Department of Finance v. City of Merced, et al., Sacramento Superior Court, Case No. 34-2016-80002485

PARTIES

This Settlement Agreement ("Agreement") is entered into by the City of Merced ("City"), the Merced Designated Local Authority ("Merced DLA"), Merced County Auditor-Controller Lisa Cardella-Presto ("Auditor-Controller"), and the California Department of Finance ("Finance"), collectively, the "Parties."

RECITALS

- A. The litigation resolved by this Agreement relates to the wind down of the Redevelopment Agency for the City of Merced (RDA) pursuant to Assembly Bill 26 of the 2011-12 First Extraordinary Session of the California Legislature ("AB x1 26") and Assembly Bill 1484 of the 2011-12 Regular Session of the California Legislature ("AB 1484") (AB x1 26 and AB 1484, collectively the "Dissolution Law").
- B. Following the dissolution of the RDA, Merced DLA submitted its Due Diligence Review (DDR) for other funds and accounts (OFA) on January, 15, 2015, and its DDR for Low and Moderate Income Housing Fund (LMIHF) on May 15, 2015.
- C. Finance issued letters dated December 4, 2015, identifying a balance of over \$13,158,141 million in the two DDRs combined. After a meet and confer about the determinations, Finance issued letters dated January 8, 2016, revising but largely upholding the determinations and calculating a new balance of \$13,035,007 for the two DDRs.
- D. The City and Merced DLA subsequently remitted \$3,014,796.17 to the Auditor-Controller, leaving a \$10,020,210.83 balance.
- E. After an extensive meet and confer about Finance's determinations, Finance issued a letter dated August 25, 2016, requiring the City and Merced DLA to either remit the full \$10,020,210.83 balance or agree to a payment plan with Finance by October 24, 2016. Neither the City nor Merced DLA remitted the DDR balance or reached agreement with Finance on a payment plan.
- F. Finance filed a Petition for Writ of Mandate on November 15, 2016, entitled *California Department of Finance v. City of Merced, et al.*, Sacramento County Superior Court Case No. 34-2016-80002485 ("Action"), alleging that the City and Merced DLA had a clear, present, and ministerial duty to remit the \$10,020,210.83 balance in accordance with California Health and Safety Code sections 34179.6 and 34179.9.
- E. The superior court granted the petition, and on September 15, 2017, Finance filed notice of entry of the superior court's order, the peremptory writ of mandate, and the judgment. In the course of this litigation, the Parties agreed that the \$10,020,210.83 balance should be reduced to reflect that the City had remitted \$491,815 in unencumbered bond proceeds. The remaining

balance is \$9,528,395.83.

- F. The City appealed the judgment on October 12, 2017. The Third Appellate District of the Court of Appeal issued an opinion on March 22, 2019, directing the superior court to recall the writ and modify the judgment to specify the exact dollar amount of the unencumbered bond proceeds within the DDR balance. The Third Appellate District affirmed the judgment as modified.
- G. The California Supreme Court denied the City's petition for review on June 19, 2019, and the Third Appellate District issued a remittitur to the superior court on June 27, 2019. On July 15, 2019, the superior court directed the parties to prepare a modified proposed judgment.
- H. Notwithstanding the Court's decision in the Action, and without admission of fault or wrongdoing, the Parties have agreed to completely resolve any and all disputes between the Parties pertaining to, or in any way relating to the Action by entering into this Agreement.

AGREEMENT

Accordingly, in consideration of the mutual promises contained herein, the Parties agree as follows:

- 1. Principal Terms: The Parties agree to the following resolution of the litigation:
- (a) The City will remit the \$9,528,395.83 DDR balance to Merced DLA pursuant to the following schedule:
 - \$2,000,000 by no later than October 1, 2019,
 - \$2,000,000 by no later than July 1, 2020,
 - \$1,250,000 by no later than July 1, 2021,
 - \$1,250,000 by no later than July 1, 2022,
 - \$1,250,000 by no later than July 1, 2023,
 - \$1,250,000 by no later than July 1, 2024, and
 - \$528,395.83 by no later than July 1, 2025.
- (b) Within five business days of receipt, the Merced DLA will remit to the Auditor-Controller all DDR funds received from the City under this Agreement, except that Merced DLA will retain from the City's first payment unencumbered bond proceeds in the amount of \$280,359 to be utilized as provided in the Dissolution Law.
- (c) Subject to charging administrative fees and costs permitted by law (including, but not limited to, California Health and Safety Code section 34182, Revenue and Taxation Code section 95.3, and SB 2557), the Auditor-Controller will distribute all DDR funds received under this Agreement to the taxing entities, consistent with California Health and Safety Code sections 34179.5 and 34179.6. The term "taxing entities" is as defined in California Health and Safety Code section 34171, subdivision (k).
 - (d) The City and Merced DLA may accelerate payment of any remaining balance

without penalty.

- (e) The City and Merced DLA agree not to file any lawsuit or assert any claim against Finance with respect to the DDR funds remitted under this Agreement. This Agreement does not preclude Merced DLA from listing any item on a Recognized Obligation Payments Schedule (ROPS).
- 2. <u>Claims Disputed</u>: The Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. This Agreement is a compromise settlement of the Action, and by executing this Agreement, none of the Parties admits wrongdoing, liability, or fault in connection with either the Action or the allegations asserted in the Action.
- 3. <u>Mutual Release</u>: The Parties specifically and mutually release and discharge each other, including their respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors and assigns from all obligations, damages, costs, expenses, liens, attorney fees of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, disputed or undisputed, pertaining to the Action.
- 4. <u>Successors and Assigns</u>: This Agreement shall be binding upon the Parties' respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, departments, divisions, sections, successors and assigns.
- 5. Assumption of Risk: The Parties each represent that they fully understand that if the facts pertaining in any way to the Action are later found to be different from the facts now believed to be true by any Party, each of them expressly accepts and assumes the risk of such possible differences in facts and agrees that this Agreement shall remain effective notwithstanding such differences in facts. The Parties also each represent that this Agreement was entered into under the laws in existence as of the effective date, and agree that this Agreement shall remain effective notwithstanding any future changes in the law.
- 6. <u>Independent Advice of Counsel</u>: The Parties each represent that they know and understand the contents of the Agreement and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations and with respect to the execution of this Agreement.
- 7. <u>Entire Agreement</u>: No promise, inducement, understanding, or agreement not expressed has been made by or on behalf of the Parties, and this Agreement contains the entire agreement between the Parties related to the Action.
- 8. <u>Indemnity</u>: Each Party represents that it has not assigned, transferred, or purported to assign or transfer to any person or entity any matter released herein. The respondents in the Action also agree to indemnify and hold harmless the petitioners in the Action and their successors and assigns against any claims, demands, causes of action, damages, debts, liabilities,

costs or expenses, including, but not necessarily limited to, attorney fees, arising out of or in connection with the Action.

- 9. <u>Amendments in Writing</u>: This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed by the Parties. The Parties agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.
- 10. <u>Construction</u>: The Parties agree that this Agreement is to be construed and interpreted without regard to the identity of the party drafting this Agreement.
- 11. <u>Additional Acts</u>: The Parties agree to take such actions and to execute such documents as are necessary to carry out the terms and purposes of this Agreement.
- 12. <u>Attorneys Fees</u>: The Parties shall each bear their respective attorney fees and costs incurred in the litigation.
- 13. <u>Enforcement</u>: The Parties agree that, in any proceeding to enforce the terms of this Agreement, a court shall have the authority to award equitable relief, including but not limited to specific performance, and the Parties consent to the awarding of such equitable relief, including but not limited to specific performance. If any Party to this Agreement files a lawsuit to enforce or interpret this Agreement, the prevailing Party in any such suit shall be entitled to reimbursement for reasonable attorney fees and costs.
- 14. <u>Choice of Law and Jurisdiction</u>: This Agreement shall be governed by the laws of the State of California. If any Party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Sacramento, California.
- 15. <u>Counterparts</u>: This Agreement may be executed by facsimile and in counterparts, each of which is deemed an original and all of which shall constitute this Agreement.
- 16. <u>Effective Date</u>: The date on which the last counterpart of this Agreement is executed shall be the effective date of this Agreement.
- 17. <u>Authority to Execute</u>: Each Party represents that they have the authority to enter into and perform the obligations necessary to provide the consideration described in this Agreement. Each person signing this Agreement represents and warrants that they have the authority to sign on behalf of the Party for which they sign.

This Agreement consists of Recital Paragrap	ohs A - H and Paragraphs $1-17$.
DATED: _8/6/19	CITY OF MERCED By Same
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DATED:	MERCED DESIGNATED LOCAL AUTHORITY
	By
	Its
DATED:	MERCED COUNTY AUDITOR-CONTROLLER
	By
	Its
DATED:	CALIFORNIA DEPARTMENT OF FINANCE
	By
	Its
Approved as to Form:	
PHAEDRA A. NORTON	
By: mudia Ce mm	
Phaedra A. Norton Attorney for Petitioner and Plaintiff City of	f Merced
Approved as to Form:	
XAVIER BECERRA Attorney General of California	
D.	
By: R. Matthew Wise	
Attorneys for Respondent and Defendant C	'alifornia
Department of Finance	

DATED: 8-15-19	By Michael Amabile Its D.L.A.
DATED:	MERCED COUNTY AUDITOR-CONTROLLER By Its
DATED:	CALIFORNIA DEPARTMENT OF FINANCE By Its
Approved as to Form: PHAEDRA A. NORTON By: Include Company of Phaedra A. Norton Attorney for Petitioner and Plaintiff City of Included Company of Page 1970 (1970)	 Merced
Approved as to Form: XAVIER BECERRA Attorney General of California	
By: R. Matthew Wise Attorneys for Respondent and Defendant Cal Department of Finance	lifornia

DATED:	MERCED DESIGNATED LOCAL AUTHORITY
	Ву
	Its
DATED: 8-8-19	MERCED COUNTY AUDITOR-OONTROLLER By Lisa Cardella-Presto Its Merced County Auditor-Controller
DATED:	CALIFORNIA DEPARTMENT OF FINANCE
	Ву
J	Its
Approved as to Form:	
PHAEDRA A. NORTON By: Trucka & M Phaedra A. Norton Attorney for Petitioner and Plaintiff City of	f Merced
Approved as to Form:	
XAVIER BECERRA Attorney General of California	
By:	
R. Matthew Wise Attorneys for Respondent and Defendant C Department of Finance	'alifornia

Approved as to Form:

James N. Fincher

Merced County Counsel/

Roger S. Matzkind Chief Civil Litigator

Attorney for Lisa Cardella-Presto, Merced County

Auditor-Controller

DATED:	MERCED DESIGNATED LOCAL AUTHORITY
	By
	Its
DATED:	MERCED COUNTY AUDITOR-CONTROLLER
	Ву
	Its
DATED: Augus 6, 2019	CALIFORNIA DEPARTMENT OF FINANCE By Karl Krog Sens G
U	Its CHIEF COUNSEL
Approved as to Form:	
PHAEDRA A. NORTON	
By: Phaedra A. Norton	
Attorney for Petitioner and Plaintiff City of	Merced
Approved as to Form:	
XAVIER BECERRA Attorney General of California	
By:	
R. Matthew Wise Attorneys for Respondent and Defendant Co	alifornia
Department of Finance	•

DATED:	MERCED DESIGNATED LOCAL AUTHORITY
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DATED:	MERCED COUNTY AUDITOR-CONTROLLER
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DATED:	CALIFORNIA DEPARTMENT OF FINANCE
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Approved as to Form:	
PHAEDRA A. NORTON	
By: Phaedra A. Norton Attorney for Petitioner and Plaintiff City of Merced	
•	
Approved as to Form:	
XAVIER BECERRA Attorney General of California	

By: R. Matthew Wise

Attorneys for Respondent and Defendant California Department of Finance

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.7. Meeting Date: 9/3/2019

Report Prepared by: Scott McBride, Director of Development Services

SUBJECT: Authorization to Submit a Formal Letter of Intent to Purchase for the Property Located at the Corner of Childs Avenue and B Street from the County of Merced for the Childs Court **Apartments**

REPORT IN BRIFF

Considers approving the formal letter of intent to purchase the property located at the corner of Childs Avenue and B Street from the County of Merced to support the Childs Court Apartment development.

RECOMMENDATION

City Council - Adopt a motion authorizing the City Manager or the Assistant City Manager to sign the formal "Notice of Intent" letter to purchase the property located at 1137 B Street from the County of Merced.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to modifications (identify specific changes to be addressed 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 meeting (date and time to be specified in the motion).

AUTHORITY

Section 200 of the City of Merced Municipal Code.

CITY COUNCIL PRIORITIES

As provided for in the Fiscal Year 2019-20 Budget.

DISCUSSION

Staff is requesting Council to considering authorizing the City Manager to sign the Letter of Intent (Attachment 1) to purchase the property located at 1137 B Street. Over the past year, staff has been working with the Richman Group (Developer) to submit an application to the Strategic Growth Council (SGC). An important piece of the application is the approval of the Lease Agreement between Merced County and the City to obtain site entitlements related to the Childs Court Apartment project.

File #: 19-505 Meeting Date: 9/3/2019

In 2018, City Council approved the Lease Agreement with the County of Merced for 1137 B Street with an option to purchase. The lease agreement had a four (4) year term with an option to purchase, provided either a 9% Tax-Credit application or the Affordable Housing and Sustainable Communities (AHSC) Program application was successful. In March of 2019, the Developer and the City of Merced submitted an application to the AHSC program and in July 2019 the Strategic Growth Council (SGC) announced our application was successful and awarded the project \$13.9 million, which was the final financial component to ensure the project was 100% financed. With the announcement from SGC, the City was able to reaffirm its commitment to the project and to building affordable housing within our community.

The approved Lease Agreement between the County of Merced and City of Merced included Section 6, which stated that the City had until September 30, 2019, to notify the County regarding the City's intent to purchase the property. As reference above and described in Section 6 of the contract, the City has met the conditions and now desires to exercise its option to purchase the property located at 1137 B Street. To initiate the purchasing of the property, the City needs to formally submit a letter expressing our interest in purchasing the property.

With the form letter submitted to Merced County, the City and Council will begin negotiating the Purchase and Sale Agreement.

IMPACT ON CITY RESOURCES

In March of 2019, the City Council approved a funding strategy for the Childs Court Apartments. When the Purchase and Sales Agreement is final, staff will return to Council with a final outline of funding to support the total project.

ATTACHMENTS

- Formal Letter of Intent to Purchase Property located at 1137 B Street
- 2. Executed Lease Agreement with the County of Merced



City of Merced

September 3, 2019

Dana Hertfelder, Director of Public Works County of Merced Public Works Department 715 Martin Luther King Jr. Way Merced, CA 95341-6041

Subject: Acquisition of 1137 B Street – Lease Agreement Option to Purchase

Dear Merced County Board of Supervisors,

On behalf of the City of Merced, we thank you for the continued partnership between the Merced County Board of Supervisors and County Executive staff for partnering with the City of Merced in the execution of Contract Number 2018115 (Lease Agreement) for the property located at 1137 B Street. Due in part to this partnership, the City and the Richman Group LLC (Developer) submitted a successful Affordable Housing and Sustainable Communities (AHSC) application for the Child's & B TOD Affordable Housing Project. With this announcement, the City is committed to the project and to building affordable housing within our community.

The Lease Agreement between the County of Merced and City of Merced was approved by the Board of Supervisors on June 5, 2018, in which Section 6 of the agreement (Option to Purchase) stated that the City had until September 30, 2019, to notify the County regarding the City's intent to purchase and open escrow for the property sale. As reference above and described in Section 6 of the contract, the City has met the conditions and now desires to exercise its option to purchase the property located at 1137 B Street. Please take this letter as the City's formal request. With the announcement of the successful application from AHSC, the City is formally submitting our interest to purchase the property.

If you have any additional questions, I can be reached by email at carrigans@cityofmerced.org or by phone at (209) 385-6834.

Sincerely,

Steven S. Carrigan City Manager

Cc: Chairperson of the Board for County of Merced Board of Supervisors Jim Brown, Executive Officer for County of Merced

MERCED	COUNTY
CONTRACT N	IO

LEASE FOR GROUND BETWEEN MERCED COUNTY AND CITY OF MERCED

This Ground Lease and Option to Purchase Agreement, herein called "Agreement," is made at Merced, California, by and between the County of Merced, a political subdivision of the State of California, herein called "LESSOR," and the City of Merced, a charter city of the State of California, herein called "LESSEE." LESSOR and LESSEE shall herein collectively be referred to as the "Parties."

1. PREMISES

LESSOR does hereby lease to the LESSEE, and LESSEE hereby takes into service from LESSOR, upon the terms, agreements, and conditions hereinafter set forth, the ground underlying certain premises (the Premises) as shown as the 5.06 acre Parcel A on the attached parcel map designated as Exhibit "A" consisting of two (2) pages, which is incorporated herein and by this reference made a part hereof and more commonly described as follows:

That certain real property including all improvements located on an approximately 5.06 acre parcel as described in the grant deed recorded in document 2009-061427 and generally known as 1137 "B" Street Merced, California 95341 (APN 035-010-071).

LESSOR shall retain the full and complete right of access and use of the modular building, small storage building, and parking area located on the Premises while this Agreement is in effect.

All real property is owned by LESSOR.

2. PURPOSE AND INTENT

The Parties understand and agree that LESSOR desires that the Premises be used as a site to develop affordable housing to low income individuals and families, and LESSOR has agreed to lease the premises and grant an option to purchase the Premises to LESSEE for that sole purpose. LESSEE desires to lease and subsequently purchase the Premises for the sole purposes of developing affordable housing on the Premises.

3. ENVIRONMENTAL REVIEW COMPLIANCE

The Parties recognize that the development of affordable housing on the Premises is subject to compliance with applicable federal and state environmental laws. LESSEE shall be solely responsible for, and assumes any and all liability in connection with compliance with such laws. Specifically, the Parties agree that LESSEE is the Lead Agency for purposes of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) as that Act applies to this Agreement or any action taken pursuant to this Agreement.

4. LEASE TERM

The term of this Agreement shall be fixed from the date both Parties have executed this lease, which shall be determined by the latest date stated with the Parties' signatures, and continue until June 30, 2023, unless terminated earlier under the terms of this Agreement.

5. RENT

LESSEE agrees to pay LESSOR a total amount of one dollar (\$1.00) yearly as rent.

6. OPTION TO PURCHASE

LESSOR hereby grants to LESSEE the exclusive right and option (the Option) to purchase the Premises upon the terms and conditions set forth in this section and subject to compliance with all terms and conditions of this Agreement.

- A. The purchase price for the Premises shall be set at the appraised value of one million, eighty thousand dollars (\$1,080,000) as determined by the appraisal made by K.R. McBay Co. with an appraisal effective date of August 17, 2017, attached as Exhibit B.
- B. The Option is conditioned on LESSEE's, or assignee or successor in interest, use of the Premises being limited for a period of fifty-five (55) years to the operation of an affordable housing complex on the Premises that is affordable to low income households with income at or below sixty percent (60%) of Area Median Income. LESSEE shall be required to include the construction of eighty-nine (89) affordable housing units, thirty (30) permanent supportive housing units, an open space park, a resource center, and office space for supportive service providers as part of the development and included financing plan. LESSEE shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way inconsistent with the affordable housing project described above, or in violation of any law, ordinance, or regulation of any federal, state, county, or local governmental agency, body or entity. Furthermore, LESSEE shall not maintain, commit or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.
- C. The term of the Option and LESSEE's rights thereunder shall commence from the date this Agreement is effective, and shall terminate on September 30, 2019 which should allow for the submittal of two (2) competitive 9% low income housing tax credit funding applications under the State's past timelines. The Option is conditioned on LESSEE demonstrating to LESSOR's satisfaction that LESSEE has obtained sufficient funding for an affordable housing development located on the Premises, part of which shall include funding awarded through the Low Income Housing Tax Credit administered by the California Tax Credit Allocation Committee. LESSEE shall provide LESSOR with a Preliminary Reservation Letter from the California Tax Credit Allocation Committee that states the amount of reserved low income housing tax credits the proposed project has been awarded, and lists the conditions and limitations imposed on the award. Should LESSEE not receive a federal or state credit award through the Low Income Housing Tax Credit by September 30, 2019, LESSEE and LESSOR will meet to discuss the outcome of LESSEE's application(s) including the ranking of the application(s) and the need to extend the Option to allow for additional application submittals. Should LESSEE's application receive a score that ranks in the top 5 for that program, LESSEE may request that the Option be extended through September 30, 2020. If LESSEE obtains a federal or state credit award from the Low Income Housing Tax Credit by September 30, 2019, no extension shall be granted.
- D. Upon obtaining the required funding, LESSEE may indicate its decision to exercise the

Option by execution and tender to LESSOR of a written notice of the exercise of the Option. LESSOR shall send written acknowledgement of receipt of the written notice, along with LESSOR's determination of whether LESSEE's proposed funding is sufficient to complete the project. LESSEE's right to purchase the Premises under the Option shall not be effective unless and until LESSOR acknowledges in writing that sufficient funding has been secured by the LESSEE. Upon LESSOR providing LESSEE with written notice, the Option shall be deemed "successfully" exercised.

- E. After LESSEE successfully exercises the Option, LESSOR agrees to sell and LESSEE agrees to purchase the Premises in accordance with the terms of this Agreement and a Purchase Agreement to be executed at a later date. This Agreement must be in effect on the closing date of the sale. If this Agreement is not effective on the date of closing, the Option, any Purchase Agreement or other related agreement, and any rights of LESSEE in regards to present or future interest in the Premises will automatically, immediately, and completely terminate without notice.
- F. LESSEE must successfully exercise the Option, complete the purchase of the Premises pursuant to the executed Purchase Agreement, and obtain title to the Premises prior to LESSEE, or any assign or successor in interest, beginning construction activities on the Premises.
- G. The Parties shall execute a Purchase Agreement within ninety (90) days of LESSEE successfully exercising the Option. The Purchase Agreement shall contain, in substantially the same form, the terms outlined in Exhibit C of this Agreement.

7. USE OF PREMISES

The Premises may be occupied and used by LESSEE exclusively for the purpose of performing the planning and preparation necessary for the affordable housing development described in section 6 of this Agreement.

LESSOR shall retain possession and use of the improvements specifically identified in section 1 of this Agreement for the duration of the Agreement. In the event LESSEE exercises the Option, the Parties agree to the terms outlined in Exhibit C, Purchase Agreement Terms, regarding the disposition of the improvements.

8. UTILITIES

LESSOR shall pay or cause to be paid all charges for the furnishing of gas, water, electricity, telephone, cable, satellite, and any other data transmission, services, and other public utilities to said Premises during the term of this Agreement.

9. REPAIRS AND RESTORATION

- A. <u>Maintenance by LESSEE and LESSOR</u>. At all times during the term of this Agreement, LESSEE shall, at LESSEE's sole cost and expense, keep and maintain said Premises, excluding the improvements identified in section 1, in good order and repair and in a safe and clean condition. LESSOR shall be responsible for the upkeep, repair, and maintenance of the improvements identified in section 1 during the term of this Agreement.
- B. <u>Requirements of Governmental Agencies</u>. At all times during the term of this Agreement, LESSEE at LESSEE's sole cost and expense, shall:

- Excluding the improvements identified in section 1 above, LESSEE shall make all alterations, additions, or repairs to said Premises, or the improvements or Facilities on said Premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity;
- 2) Excluding the improvements identified in section 1, observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting said Premises or the improvements or Facilities on said Premises by any federal, state, county, local, or other governmental agency or entity;
- 3) If LESSEE, in LESSEE's sole discretion, desires by appropriate legal proceedings brought in good faith and diligently prosecuted in the name of LESSEE, or in the names of LESSEE and LESSOR where appropriate or required, the validity or applicability to said Premises of any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or governmental agency or entity; provided however, that any such contest or proceeding, though maintained in the names of LESSEE and LESSOR, shall be without cost to LESSOR, and LESSEE shall protect said Premises and LESSOR from LESSEE's failure to observe or comply during the contest with the contested law, ordinance, statute, order, or regulation;
- 4) Indemnify and hold LESSOR and the property of LESSOR, including said Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from LESSEE's failure to comply with and perform the requirements of this section.
- C. <u>LESSEE's Duty to Restore Premises</u>. Should, at any time during the term of this Agreement, any buildings or improvements which are owned by LESSOR now or hereafter on said Premises be destroyed in whole or in part by fire, theft, or any other cause attributable to LESSEE's negligence or willful misconduct, this Agreement shall continue in full force and effect and LESSEE, at LESSEE's own cost and expense, shall reimburse LESSOR's reasonable costs in replacing such improvements on the Premises, or at a different location of LESSOR's choosing.
- D. <u>Application of Insurance Proceeds</u>. Any and all insurance proceeds resulting from insurance maintained by LESSEE that becomes payable at any time during the term of this Agreement because of damage to or destruction of any buildings or improvements on said Premises shall be used by LESSEE toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required by Section 9.C. of this Agreement.

10. INDEMNITY AND INSURANCE

A. <u>Indemnity Agreement.</u> The LESSEE shall indemnify, defend and hold harmless, LESSOR, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with LESSEE's performance of this Agreement, including but not limited to actions arising from public interest, land use, laws concerning affordable housing development, and environmental legal actions. Attorney's fees shall include any and all attorney's fees including

attorney's fees and staff time incurred by the offices of COUNTY counsel. LESSOR shall have full discretion to select legal counsel of its own choosing to represent LESSOR, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that LESSOR determines the Claim may reasonably require. This clause for indemnification shall be interpreted to the broadest extent permitted by law and shall survive the termination or expiration of this Agreement.

B. Insurance. LESSEE shall maintain at LESSEE's expense the following insurance:

- 1) LESSEE shall deliver and provide to LESSOR proof of Commercial General Liability insurance of at least \$2,000,000 per occurrence and \$3,000,000 annual aggregate covering bodily injury, personal injury, property damage, and fire damage liability of at least \$500,000. The policies shall cover all bodily injury, personal injury and property damage liability, up to full replacement value, resulting from acts or omissions of the LESSEE, its agents or employees in relation to the Premises. The policies shall name the LESSOR, its officers, agents and employees as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
- 2) LESSEE shall deliver and provide to LESSOR proof of Property Insurance covering the repair or replacement of the Premises and all improvements or betterments on the property. The policy shall include coverage for acts of vandalism and malicious mischief and shall include full coverage of LESSEE's own contents and furnishings during the term of this Agreement.
- 3) LESSEE shall deliver and provide to LESSOR proof of Automobile Liability insurance of at least \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage. The automobile policies shall be endorsed to name LESSOR, and its officers, employees and agents as additional insured.
- 4) LESSEE shall deliver and provide to LESSOR proof of Workers' Compensation Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the LESSOR.

C. Other Insurance Provisions.

- The LESSEE shall include all Contractors and Sub-contractors as insured's under its
 policies or shall furnish Certificates of Insurance for each Contractor or Sub-contractor.
 All coverages for Contractors or Sub-contractors shall be subject to all of the requirements
 and limits stated herein.
- 2) The LESSEE shall, prior to commencing occupancy and or operations, furnish Certificates of Insurance for each required insurance to the LESSOR, Department of Public Works/Professional Services Division. Certificates shall have any special policy endorsements attached that may be required to affect or accomplish the required insurance coverages and conditions specified, if not fully described on the Certificates.
- 3) If the LESSEE maintains broader coverage and/or higher limits than the minimums shown

above, the LESSOR requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the LESSOR.

- 4) The LESSEE'S insurance coverage shall be primary insurance as respects the LESSOR, and any insurance or self-insurance maintained by the LESSOR, its officers, agents and employees shall be in excess of LESSOR'S insurance and shall not contribute with it.
- 5) All insurance policies are to be placed with admitted insurers rated by A.M. Best as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by LESSOR's Risk Manager.
- 6) Each policy required above shall be endorsed to provide LESSOR with ten (10) days prior written notice of cancellation. LESSOR is not liable for the payment of premiums or assessments on the policies.

11. ASSIGNMENT AND SUBLEASING

LESSEE shall not assign, sublease, or otherwise transfer this Agreement, any right or interest in this Agreement, or any right or interest in said Premises or any of the improvements that may now or hereafter be constructed or installed on said Premises, without the express written consent of LESSOR first had and obtained. Consent by LESSOR to one assignment shall not be deemed to be consent to any subsequent assignment of this Agreement by LESSEE.

12. TERMINATION

Notwithstanding section 4 above, this Agreement shall terminate if LESSEE has not successfully exercised the Option under the terms of section 6 of this Agreement. This Agreement must be in effect on the closing date of the sale. If this Agreement is not effective on the date of closing, whether due to the expiration of the term or termination for any reason, the Option, any Purchase Agreement or other related agreement, and any of LESSEE's (and anyone claiming by or through LESSEE) rights or interest in the Premises shall be immediately and unconditionally terminated without notice.

LESSEE further agrees that it has no claim in either law or equity against LESSOR for damages or other relief should the Agreement be terminated, and waives any such claims it may have.

13. TERMINATION FOR CONVENIENCE

Notwithstanding anything to the contrary, LESSOR may terminate this Agreement at any time without cause or legal excuse by providing LESSEE with thirty (30) calendar days written notice of such termination.

14. REMEDIES OF LESSOR ON DEFAULT OF LESSEE

Should LESSEE default in the payment of rent, if any, or in the observance or performance of any of LESSEE's covenants or agreements herein, and should such default continue after ten (10) calendar days following receipt of written notice thereof from LESSOR to LESSEE requiring payment, in the case of default in the payment or rent; or after thirty (30) calendar days from the receipt of written notice thereof by LESSOR to LESSEE requiring performance in case of such

other defaults, LESSOR shall have the right to terminate this Agreement and personally, or by LESSOR's agent enter and take possession of the leased Premises and remove LESSEE and LESSEE's property there from. LESSEE shall have the right to cure any default within the period of notice thereof as specified herein above, and, if the default, other than in the matter of payment of rent, is of such a nature that it cannot be cured within the thirty (30) calendar day period specified in the notice thereof, it shall be sufficient if LESSEE shall in good faith commence during said period to cure such default if so accomplished within a reasonable time thereafter. The rights and remedies granted to LESSOR herein are concurrent and cumulative and are in addition to, and not in derogation of, all other rights and remedies, whether legal or equitable, available to LESSOR.

15. COMPLIANCE WITH GOVERNMENTAL REGULATIONS

LESSOR and LESSEE, in respect to their individual covenants and duties, will comply with the requirements of local, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to the said Premises.

16. HAZARDOUS SUBSTANCE

LESSEE agrees that it will comply with all laws, either federal, state, or local, existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event LESSOR or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney fees and costs, as a result of the LESSEE'S illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, drug or drug residue, the LESSEE shall indemnify, defend, and hold harmless any of these individuals against such cost. Where the LESSEE is found to be in breach of this provision due to the issuance of a government order directing the LESSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LESSEE or any person acting under LESSEE's direct control and authority, LESSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by LESSOR in connection with or in response to such government order.

17. CHANGES IN THE LAW

During the term of this Agreement should any Federal, State of Local law be enacted, which materially affects this Agreement, the Parties may renegotiate this Agreement at that time.

18. RIGHT TO ENTRY

LESSEE shall permit LESSOR, or their agents, to enter said Premises for the purpose of examining, exhibiting the same, or making such repairs or alterations as may be necessary for the safety or preservation thereof. This right of entry is in addition to LESSOR's rights regarding its use of the Premises as stated in sections 1 and 7.

19. TAXES

LESSOR agrees to pay all taxes, assessments, or charges which at any time may be leveled by any governmental entity upon interest in this Agreement or any possessory right LESSOR may have in any improvements against said Premises.

20. DISPOSITION OF IMPROVEMENTS

Upon termination of this lease for any cause, LESSEE shall remove any and all equipment and improvements of the LESSEE and restore the entire premises to its condition prior to the execution of this lease, except, however, the LESSOR may approve, in writing, any deviation from this requirement.

21. NOTICES

- A. All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:
 - 1) <u>Personal Delivery</u>. When personally delivered to the recipient, notice is effective upon delivery.
 - First Class Mail. When mailed first class to the last address of the recipient known to the Party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
 - 3) <u>Certified Mail</u>. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
 - 4) Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
 - 5) Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. (recipient's time) or on a non-business day.
- B. Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.
- C. Information for notice to the Parties to this Agreement at the time of endorsement of this Agreement is as follows:

LESSEE
City of Merced
Development Services Department
678 W. 18th Street
Merced, CA 95340

LESSOR
County of Merced
Public Works Department
715 Martin Luther King, Jr. Way
Merced, CA 95341-6041

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

22. MODIFICATION OF THE LEASE

Notwithstanding any of the provisions of this Agreement, this writing contains the entire agreement between the Parties hereto, and there are no other agreements or understandings written or oral. This Agreement may not be changed or modified except in writing and signed by the Parties hereto.

23. RECORDATION OF AGREEMENT

This Agreement and any amendment or cancellation thereof shall be filed or recorded in the real property records of the County of Merced.

24. WAIVER OF TERMS

No waiver of any terms, conditions, or covenant of this Agreement by either Party shall be deemed as a waiver of any other item, condition, or covenant herein contained, nor of the strict and prompt performance thereof.

25. CONSTRUCTION

The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

26. VENUE

Any dispute concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the Parties agree otherwise or are otherwise required by law.

27. CAPTIONS

The captions of each paragraph on this Agreement are inserted as a matter of convenience for reference only, and in no way define, limit or describe the scope or intent of this Agreement in any way.

28. COPIES OF THE AGREEMENT

This Agreement is executed in counterparts each of which shall be deemed a duplicate original.

IN WITNESS HEREOF, the Parties, the day and year first above written, have affixed their signatures hereto.

LESSEE

Michael W. Murphy Mayor, City of Merced LESSOR

Jerald R. O'Banion, Chairman

5 2018

Merced County Board of Supervisors

9

APPROVED AS TO LEGAL FORM: MERCED COUNTY COUNSEL

By: James N. Fincher

Jeffrey B. Grant

CITY OF MERCED

y: AffONG 19/18

300620 PO # 130693
FUNDS/ACCOUNTS VERIFIED.

FINANCE OFFICE

DATE 4-2798

Funds Availale une 6/19/18

071-1363-552.21.00 PC 4/19/18

\$600

ATTEST: CITY CLERK

Assistant/Deputy City Clerk

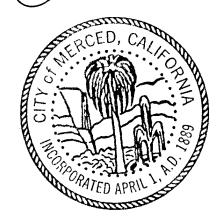


EXHIBIT A

Parcel Map

OWNERS STATEMENT

THE UNDERSIGNED being the party having a record title interest in the land as plotted by this map, hereby consents to the preparation and recordation of this map.

RAYMOND A. BESSEMER

IMPROVEMENT STATEMENT
This map approved subject to improvements as called and in Residution No act of the City of Merced.
Min or Subdivision Committee, as amended, as detect
January 1, 2000 on file at the City of Merced
Planning Department

ACKNOWLEDGEMENT

State of California County of MERCED

On Marty before me System A. Kreeise, Norman Pariti is personally appeared than the Sisteman. Known to me or prove to me of the basis of activitations evidence to be the personal whose name of Bigere subscribed to the within instrument and exchangulated to me that (Beleat these secret the same in (Bigere) that we have the personal in (Bigere) that we have the personal in (Bigere) that the personal in the instrument the personal that by this her than signaturately in the instrument the personal or or this upon behalf of which the personal acted, executed the instrument.

NOTARY SIGNATURE

COUNTY PLACE OF BUSINESS

COMMISSION EXPIRATION DATE

STENEN A. KOENKY PRINTED NAME OF HORTARY

SURVEYORS STATEMENT

SURVEYORS STATEMENT
This may was prepared by me or under my direction and is based on a field survey in conformance with the requirements of the Subdivision Map het and local arctinance of the reques of Dr. Reymond Sessemer on July 16, 1999. Hereby starte that this map substantially conforms to the approved or conditionally approved freshold the map. I may, and they all character and accupy the positions in indicated and are sufficient to enable the survey to be retraced.

Paul J. Stregory.



CITY ENGINEERS STATEMENT

CITY ENGINEERS STATEMENT
I hereby state that I have examined this parcel and the subdivision shown hereon is substantially the said appeared on the tentative map, and ony approach that the tentative map, and ony approach that the subdivisions of the Subdivisions on the Subdivisions of the tentative map and that I am actist the map is approached to the subdivisions of the tentative map and that I am actist the map is approached to the subdivisions of the subdivis



RECORDER'S STATEMENT

Filed this 2 to day of Much 194, at 1:40 oclock P.M in Book 84 of Panel Maps at Page(6) 21-23 at the request of Paul Gregory

Inst No. 6746

Uames Ball COUNTY RECORDER

CITY OF MERCED LOT SPUT **99-05
PARCEL MAP FOR

RAYMOND A. BESSEMER M.D.

BEING A DIVISION OF PARCEL B REMAINDER AS SHOW ON PARCEL MAP BOOK 85 PAGES 32 8 33 MERCED COUNTY RECORDS, BEING A PORTION OF BLOCKS 542 8 543 Á6 SHOWN ON "MAP OF MERCED CITY AND SUBDIVISION OF ADJOINING ACREAGE PROPERTY" BOOK 2 OF MAPS MERCED COUNTY RECORDS AT PAGE 59 SECTION 30, T. 7 S. R. 14 E. M.D. B & M. MERCED COUNTY COUNTY CALIFORNIA

AUGUST , 1999

BOOK 86 PAGE 22

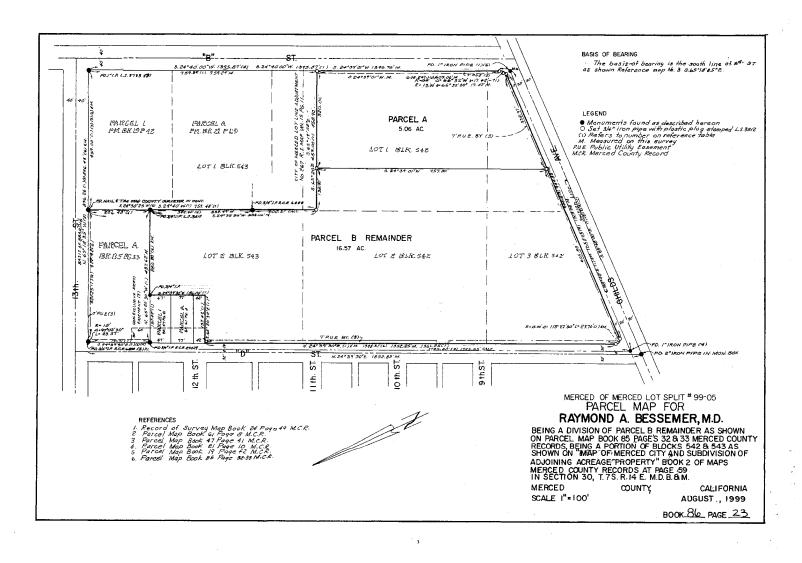


EXHIBIT B

APPRAISAL REPORT

COMMERCIAL LOT & MODULAR OFFICE 1137 B STREET, MERCED, CA 95341 APN: 035-010-071 MERCED COUNTY

EFFECTIVE DATE OF APPRAISAL AUGUST 17, 2017

PREPARED FOR

MERCED COUNTY
DEPARTMENT OF ADMINISTRATIVE SERVICES
2222 M STREET, ROOM1
MERCED, CA 95340

PREPARED BY

K. R. MCBAY CO. P.O. BOX 1804 TURLOCK, CA 95380-1804 (209) 634-0402

K. R. McBay Company

Real Estate Valuation and Consultation Commercial, Agricultural, Eminent Domain

August 25, 2017

Frank Rybka Merced County Department of Administrative Services 2222 M Street, Room 1 Merced, CA 95340

RE: Commercial Lot and Modular Office

1137 B Street, Merced CA 95341 APN: 035-010-071 (Merced County)

Mr. Rybka:

In accordance with your request, an appraisal was completed on the above referenced property. The purpose of the appraisal is to provide a supported opinion of the "As-Is" Market Value of the Fee Simple Estate in the subject property.

The appraisal and appraisal report format conforms to the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. Specifically, the client and appraiser identified Scope of Work is relied upon.

This is an introductory letter to the following appraisal report. The value opinions stated in this letter must be placed in the context of the entire report. The appraisal is based upon Extraordinary Assumptions which if proven false could affect the value conclusion. See Extraordinary Assumptions section of this appraisal report. As a result of our investigation and analyses, and based upon the assumptions and limiting conditions stated within this report, it is our opinion, that the Market Value, As-Is, Fee Simple Estate, as of August 17, 2017, the effective date of the appraisal, is:

ONE MILLION EIGHTY THOUSAND DOLLARS \$1,080,000

Kenneth R. McBay, Principal/Sr. Appraiser

MAI, ARA, SR/WA, AI-GRS

CA Certified General AG008218

(Expires 4/18/2019)

Ryan D. Heiny, Sr. Appraiser CA Certified General AG041138

(Expires 6/1/2019)

K. R. McBay Co. www.krmcbayco.com

P. O. Box 1804 Turlock, CA 95381-1804

Kenneth R. McBay, Principal/Sr. Appraiser

Direct: 209 634 0402

Email: kennethmcbay@krmcbayco.com

415 589 8755

ryanheiny@krmcbayco.com

Ryan D. Heiny, Sr. Appraiser Mark A. Souza, Sr. Appraiser

209 495 8021

marksouza@krmcbayco.com

EXECUTIVE SUMMARY

<u>Client Name:</u> Merced County

Location: 1137 B Street, Merced CA 95341

Merced County

Legal Description: See Grant Deed in Addenda

Assessor's Parcel Numbers: APN: 035-010-071 (Merced County)

MSA: Merced County MSA

Census Tract: 3.01

Owner of Record: County of Merced, a body politic and corporate

Property Rights Appraised: Fee Simple Estate

Property Size: 5.06 acres/220,414 SF

Building Improvements: 4,260 Square Foot Modular Office Building

General Plan: C-O Commercial Office

Zoning: P-D Zone (Planned Development):

This zone is intended to provide a zone which can permit and enjoin logical or desirable development and carry out

the objectives of the general plan.

Flood Zone: Zone X – Panel #060191 0440 G, Dated 12/2/2008

Environmental Hazards: None known or observed, See Extraordinary Assumptions

Highest and Best Use: As if vacant: Development to commercial use as allowed

by zoning.

As improved: Potential continued use "As-Is" of the parking lot with interim use or demolition of the modular office building and development to commercial use as

allowed by zoning.

Effective Date of Value: August 17, 2017

Marketing Period: Less than 12 months

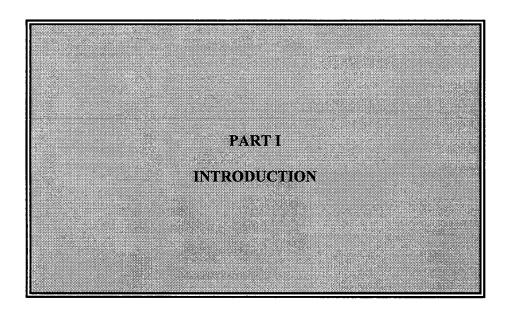
Property Value

Value by Cost Approach	\$1,080,000
Value by Sales Comparison Approach	NA
Value by Income Approach	NA

Market Value – Fee Simple Estate \$1,080,000

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INTRODUCTION

THE PROPERTY

The property appraised is the Fee Simple Estate of a 5.06 acre parcel with a temporary modular office structure, located at 1137 B Street in Merced, CA. The subject is APN: 035-010-071 in Merced County. The subject site is improved with a 4,260 SF GBA modular office building, parking lot, and landscaping (See Site Description).

The City of Merced plans on acquiring a portion of the subject for the purposes of neighborhood storm drainage. The subject was previously appraised with a 1.24 acre detention basin being developed on the southern portion of the subject, and granted to the City of Merced; reducing the land available for development. Basic land prep was completed (basic excavation and storm pipe noted). We have been asked to value the parcel as a whole (available for development), and dis-regard the prior project. The city is reevaluating its storm drainage project and the required size of its acquisition on a portion of the subject (see Site Analysis). The subject is appraised in its "before condition" in regards to the planned future acquisition, and it is an Extraordinary Assumption that the entire subject site would be available for development, typical of other parcels in the City of Merced (see Extraordinary Assumptions).

LEGAL DESCRIPTION

See Grant Deed in Addenda.

CLIENT

Merced County

PROPERTY RIGHTS APPRAISED

Fee Simple Estate

PURPOSE OF THE APPRAISAL REPORT

The purpose of this appraisal is to provide a supported opinion of the market value of the Fee Simple Estate of the subject property.

INTENDED USER AND USE

This report is provided for the sole use of the specified client for the function stated.

OWNERSHIP/ACQUISITION HISTORY

Title to the subject is vested in the County of Merced. The subject is not currently listed for sale or lease and no market sales have occurred in the prior five years.

SCOPE OF THE APPRAISAL

To appraise this property, the Cost, Income, and Sales Comparison Approaches to value were considered. The applicable approaches are used. The scope of the appraisal included:

- A physical inspection of the subject property.
- Inspections of the comparable properties utilized in this report.
- Discussions with listing agents regarding comparable properties and market trends.
- Documentation of current market data including review of sales and current market listings.
 The market data contained in this report was obtained from a variety of sources and has been
 used to document the valuation conclusions. Those sources included discussions with
 appraisers, real estate agents, and market participants familiar with the market area and
 searches of Loopnet.com and the local MLS.
- Use of the Merced County Treasurer/Tax Collector and Planning Departments website and online Geographic Information System.
- The Cost Approach was considered appropriately supported, adequate for credible assignment results, and was utilized in the valuation.
- Analysis of the data obtained and correlation of the findings into Final Value Estimates.

DATE OF VALUE

The valuation date is based upon the date of inspection, August 17, 2017.

DEFINITIONS

MARKET VALUE¹

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeable and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- A. Buyer and seller are typically motivated;
- B. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
- C. A reasonable time is allowed for exposure in the open market;
- D. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- E. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

HIGHEST AND BEST USE²

This is an appraisal concept, which is defined as follows:

The reasonable, probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and which results in highest land value.

FEE SIMPLE ESTATE³

Absolute ownership unencumbered by any other interest or estate subject only to the four powers of government (taxation, eminent domain, police power and escheat).

LEASED FEE ESTATE⁴

An ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others; the rights of the lessor or the leased fee owner and leased fee are specified by contract terms contained within the lease (Lessor's or Landlord's Estate.)

LEASEHOLD ESTATE⁵

The right to use and occupy real estate for a stated term and under certain conditions, conveyed by a lease (Tenant Estate.)

⁴Ibid

Office of the Controller of the Currency, 12CFR, Part 34, Sub-part C – Appraisals, 1/1/2004.

²The Appraisal of Real Estate, 13th Ed., Appraisal Institute, Chicago, Illinois, 2008.

³Ibid

⁵Ibid

ASSUMPTIONS AND LIMITING CONDITIONS

- 1. That to the best of our knowledge, the legal descriptions, title information, maps, statements of fact, and related data contained within the report, upon which the analysis and conclusions are based, are true and correct. However, since much of said data was furnished by others, absolute correctness cannot be guaranteed by the appraiser unless known to be a fact by his own personal knowledge.
- 2. Neither all nor part of the contents shall be disseminated to the public through advertising media, public relations media, news media, or any other public means of communication without the prior written consent and approval of the undersigned. Possession of this report, or any copy thereof, does not carry with it the right of publication or reproduction without the written consent of the appraiser.
- 3. Delivery of this report constitutes completion of this appraisal assignment, and any further consultation, including pre-trial appearances, will be the subject of a further assignment.
- 4. All plot plans, maps, and improvement diagrams in this report are included to assist the reader in visualizing the property and are not necessarily drawn to scale.
- 5. Title to the subject is assumed marketable. The property is valued in fee simple unless otherwise noted, assuming competent ownership and management.
- 6. Unless otherwise stated in this report, the existence of hazardous material, or pollutants from any source whether man-made or from natural sources, including, but not limited to radio-active, toxic or explosive, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or adjacent to the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value, and if re-appraised, additional cost will be necessary to estimate the effects of such an impact.
- 7. The use of this report is subject to the requirements of various appraisal organizations relating to review by its duly authorized representatives.
- 8. No consideration has been given in this appraisal to personal property located on the premises or any consideration given to the cost of relocating any property personal or real from the subject.
- 9. Any distribution of total value between land and improvements applies under the existing program of utilization. The separate valuations for land and building must not be used in conjunction with any other appraisal, and are invalid if so used.
- 10. That no opinion is expressed to any subsurface oil, gas or mineral rights. It is assumed that there are no adverse subsurface conditions, particularly those related to soil bearing capacity.

- 11. The appraiser reserves the right to make such adjustments to the concluded value reported, as may be required by consideration of additional data or more reliable data that may become available.
- 12. That all required licenses, permits, consents, or other legislative or administrative authority from any local, state, or national governmental, private entity, or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based or assumed.
- 13. That no engineering survey has been made by the appraiser. Except as specifically stated, data relative to size and area was taken from sources considered reliable and no encroachment of real property improvements is considered to exist. The appraiser has not been provided any survey.
- 14. The appraiser will not be required to give testimony or appear in court because of having made this appraisal, with reference to the property in question, unless arrangements have been made previously.
- 15. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
- 16. Acceptance of and/or use of this appraisal report constitutes acceptance of the general assumptions and general limiting conditions included within this report.
- 17. This appraisal report has been prepared for the use of the addressee only. No responsibility is assumed for its possession, use, or reliance upon factual data, or conclusions, contained herein by anyone other than the addressee. The report is intended solely for the purpose stated herein.
- 18. That any existing encroachment, if any, of subject improvements on adjacent property has no material effect on value of subject property.
- 19. No structural report was made available to the appraiser and it is therefore assumed the subject improvements are structurally sound and without structural damage.
- 20. That any projections presented in this Report, including, but not limited to, those involving income, expenses, capitalization rates and yield (discount) rates, are not predictions of the future. They are intended to represent typical projections made by investors and developers in the market place. The various underlying assumptions, taken in the aggregate, are believed to provide a reasonable basis for the forecast herein; however, the real estate market is constantly changing in response to economic conditions and, therefore, some assumptions may not materialize and unanticipated events and circumstances may occur. Consequently, the actual results during a projection period may vary from the forecast and the variation may be material. No warranty or representation is made, or implied, that the projections in the instant analysis will take place or that financing can be obtained at the appraised value.

- 21. The Americans with Disabilities Act (ADA) became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in estimating value of the property.
- 22. The liability to the client or client requirements such as any review is limited to 30 days after receipt. Any changes, corrections, or revisions, after this time are subject to acceptance by K. R. McBay Company, and are subject to additional fees for extra services.

EXTRAORDINARY ASSUMPTIONS

- 1. An environmental assessment was not available to the appraiser. It is an Extraordinary Assumption that there are no environmental issues affecting the valuation of this property.
- 2. A Preliminary Title Report was not available for review. It is an Extraordinary Assumption that there are no title issues affecting the valuation and that the existing subject parcel is adequately described by the Grant Deed (See Addenda).
- 3. The City of Merced plans on acquiring a portion of the subject for the purposes of neighborhood storm drainage. The subject was previously appraised with a 1.24 acre detention basin being developed on the southern portion of the subject, and granted to the City of Merced; reducing the land available for development. Basic land prep was completed (basic excavation and storm pipe noted). We have been asked to value the parcel as a whole (available for development), and dis-regard the prior project. The city is re-evaluating its storm drainage project and the required size of its acquisition on a portion of the subject (see Site Analysis). The subject is appraised in its "before condition" in regards to the planned future acquisition, and it is an Extraordinary Assumption that the entire subject site would be available for development, typical of other parcels in the City of Merced.

CERTIFICATE OF APPRAISER

I certify that, to the best of my knowledge and belief:

- 1. The statements of fact contained in this report are true and correct.
- 2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- 3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- 4. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- 5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- 6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- 7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- 8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- 9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by their duly authorized representatives.
- 10. I have personally inspected the subject of this report.
- 11. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- 12. As of the date of this report, I have completed the Standards and Ethics Education Requirements for Candidates of the Appraisal Institute.

Ryan D. Heiny, Sr. Appraiser

The sking

General Certificate #AG041138 (Expires 6/1/2019)

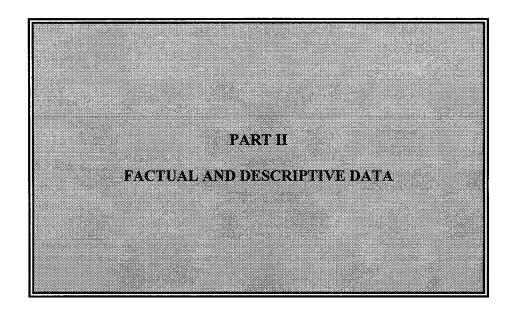
CERTIFICATE OF APPRAISER

I certify that, to the best of my knowledge and belief:

- 1. The statements of fact contained in this report are true and correct.
- 2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- 3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- 4. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- 5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- 6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- 7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- 8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- 9. The use of this report is subject to the requirements of the Appraisal Institute, American Society of Farm Managers and Rural Appraisers, and the International Right of Way Association, relating to review by their duly authorized representatives.
- 10. I have not personally inspected the subject of this report.
- 11. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, American Society of Farm Managers and Rural Appraisers, and the International Right of Way Association.
- 12. As of the date of this report, I have completed the continuing education program of the Appraisal Institute, American Society of Farm Managers and Rural Appraisers, and the International Right of Way Association.

1.11.1111/1₂₀₉

Kenneth R. McBay, MAI, ARA, SR/WA, AI-GRS General Certificate #AG008218 (Expires 4/18/19)



REGIONAL PROFILE

The subject is a portion of those properties affected by the social, economic and environmental influences of the Merced Metropolitan Statistical Area (MSA), comprised of Merced County.

Location and Area

The subject property is located at 1137 B Street in the City of Merced. The property is approximately ¾ of a mile southwest of the central business district in the City of Merced and within ½ of a mile of State Highway 99 to the northeast. Merced County is bordered by Stanislaus County to the north and Madera County to the south. Merced County spans the Central San Joaquin Valley from the western coastal ranges to the foothills of Yosemite Park to the east.

The county's 1,234,370 acres consist mainly of a level, agriculturally rich alluvial plain produced by the Chowchilla, San Joaquin, and Merced Rivers. Agriculture is one of the county's main sources of revenue. Based on production, Merced is the fifth-leading agricultural county in California. Milk and related products from Merced's commercial dairies generate the greatest amount of revenue. Other crops grown in commercial quantities include almonds, beef, poultry, and sweet potatoes

Six incorporated cities are located in the county and include Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced. Merced is the county seat.

Population Trends

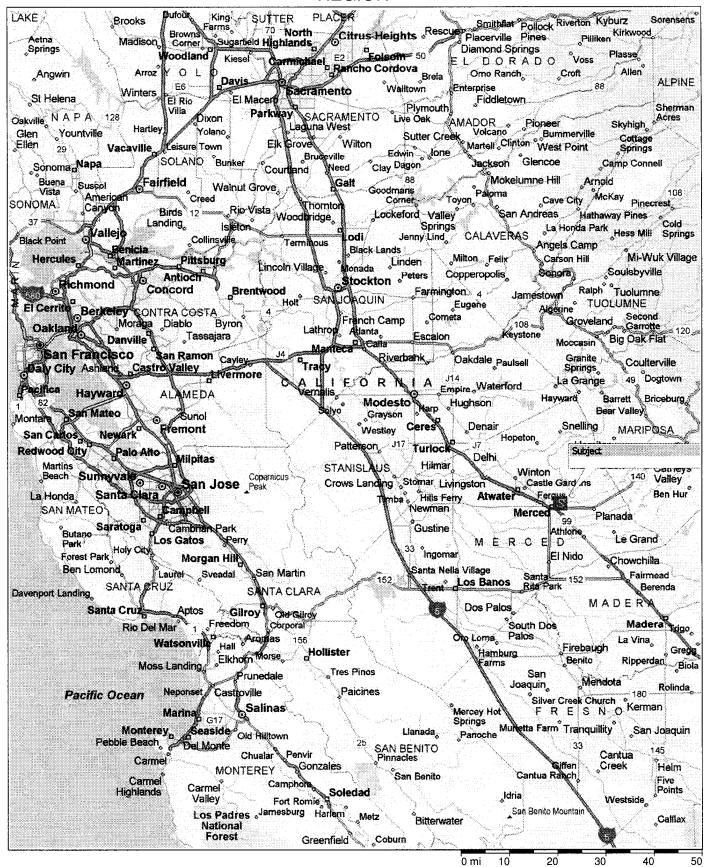
Population in Merced County reached 268,672 as of January 1, 2016, Merced County experienced an increase of 8.6% from 2009 to 2017 indicating a moderate rate of population growth.

The following table illustrates the 2009 - 2017 population growth for the county and selected areas of Merced County.

	POP	ULATION	- MERCEL	COUNTY	CITIES		
	2009	2011	2013	2014	2015	2016	2017
Atwater	27,677	28,377	28,931	28,905	29,023	30,059	30,406
Dos Palos	4,911	4,973	5,036	5,013	5,023	5,375	5,391
Gustine	5,412	5,546	5,626	5,606	5,618	5,840	5,886
Livingston	12,988	13,266	13,542	13,696	13,735	13,848	13,947
Los Banos	35,654	36,525	37,017	37,003	37,145	39,354	39,993
Merced	78,430	79,259	80,599	81,176	81,722	83,955	84,464
Unincorporated	87,954	90,038	91,727	93,168	93,868	93,116	94,578
County Total	253,026	257,984	262,478	264,567	266,134	271, 547	274,665

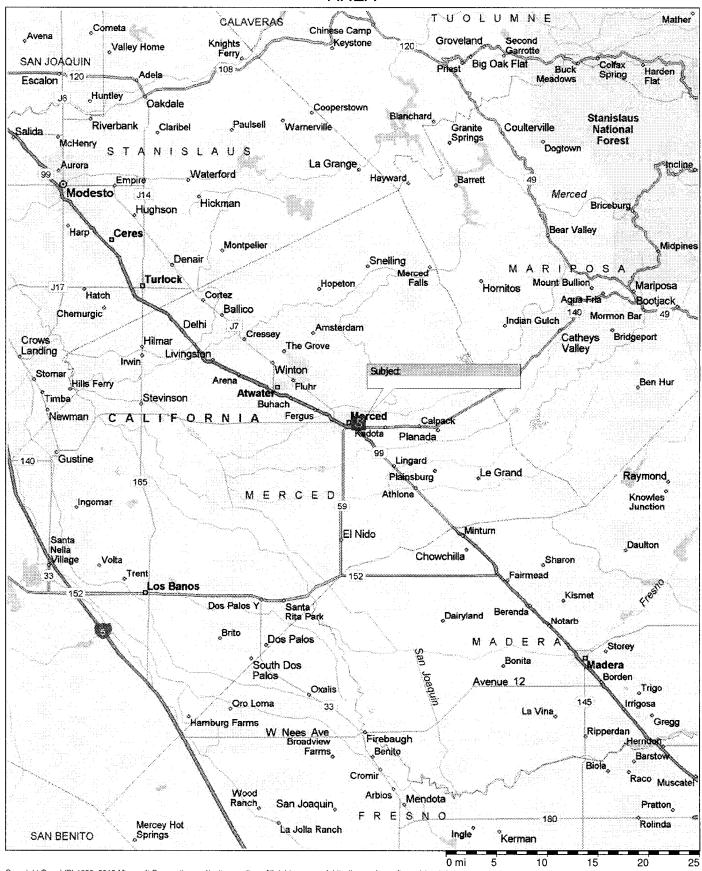
Source: California Department of Finance

REGION



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AREA



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Employment Trends

The unemployment rate in Merced County was 9.4 percent in June 2017; below the year-ago estimate of 10.1 percent. This compares with an unadjusted unemployment rate of 4.9 percent for California and 4.5 percent for the nation during the same period.

Merced County	2009	2011	2012	2013	2014	2015	2016
Civilian Labor Force	105,200	109,900	110,000	112,700	113,025	115,100	115,000
Civilian Employment	87,300	87,100	88,600	96,100	98,267	102,000	103,000
Civilian Unemployment	17,900	22,800	21,400	16,500	14,758	13,100	12,100
Civilian Unemp. Rate	17.0%	20.7%	19.5%	14.7%	13.0%	11.4%	10.5%

Source: State of California, Department of Employment Development

Industry Employment

The following table indicates the changes in employment by industry categories and a relatively diverse economic base.

	2010	2011	2012	2013	2014	2015	2016
Total, All Industries	69,200	70,100	71,800	74,000	75,800	77,400	79,200
Total Farm	10,800	11,400	12,500	13,600	13,700	14,100	14,000
Total Nonfarm	58,400	58,700	59,200	60,400	62,000	63,400	65,200
Total Private	41,700	42,200	42,800	43,800	44,900	45,700	46,700
Goods Producing	9,900	9,800	10,000	10,300	11,400	11,600	11,500
Mining, Logging, and Const	1,600	1,600	1,600	1,600	1,700	1,900	2,200
Manufacturing	8,300	8,200	8,400	8,700	9,700	9,700	9,400
Nondurable Goods	7,300	7,300	7,400	7,500	8,300	8,400	8,000
Service Providing	48,500	48,900	49,200	50,100	50,700	51,800	53,600
Private Service Providing	31,800	32,400	32,800	33,500	33,600	34,100	35,100
Trade, Transp & Utilities	11,400	11,800	12,100	12,100	12,000	12,200	12,600
Wholesale Trade	2,000	2,100	2,200	2,100	1,900	1,800	2,000
Retail Trade	7,200	7,400	7,400	7,600	7,800	8,000	8,100
Transport, Wrhsng & Util	2,200	2,400	2,400	2,500	2,300	2,400	2,500
Information	600	400	400	400	400	300	300
Financial Activities	1,600	1,500	1,600	1,500	1,600	1,600	1,800
Prof & Business Services	4,200	4,400	4,300	4,300	3,800	3,800	3,700
Ed & Health Services	8,100	8,200	8,300	8,800	9,100	9,400	9,800
Leisure & Hospitality	4,500	4,600	4,700	5,000	5,400	5,400	5,600
Other Services	1,400	1,400	1,400	1,400	1,300	1,400	1,400
Government	16,700	16,500	16,400	16,600	17,100	17,700	18,500
Federal Government	800	800	700	700	800	800	800
State & Local Government	15,900	15,700	15,700	15,900	16,300	16,900	17,700
State Government	2,400	2,500	2,700	2,900	3,100	3,200	3,500
Education	1,800	1,900	2,100	2,300	2,500	2,600	2,900
Excluding Education	600	600	600	600	600	600	600

Source: State of California, Department of Employment Development

The following table identifies major employers in Merced County.

EMPLOYER NAME	LOCATION	INDUSTRY
Central Valley Trucking	Merced	Sand & Gravel (whls)
Dole Packaged Foods LLC	Livingston	Food Products-Retail
E & J Gallo Winery	Livingston	Wineries (mfrs)
Foster Farms	Livingston	Poultry Processing Plants (mfrs)
Gallo Cattle Co	Atwater	Cheese Processors (mfrs)
Golden Valley Health Ctr	Merced	Clinics
Hilmar Cheese Co	Hilmar	Cheese Processors (mfrs)
J Marchini & Son	Le Grand	Farms
Liberty Packing Co	Los Banos	Packing & Crating Service
Live Oak Farms	Le Grand	Fruits & Vegetables-Growers & Shippers
Livingston Union School Dist	Livingston	School Districts
MCOE	Merced	Educational Cooperative Organizations
Memorial Hospital Los Banos	Los Banos	Hospitals
Merced College	Merced	Schools-Universities & Colleges Academic
Merced County Human Svc	Merced	Government Offices-County
Mercy Medical Ctr Merced	Merced	Hospitals
Nor Cal Nursery	Turlock	Fruits & Vegetables-Wholesale
Quad/Graphics Inc	Merced	Printers (mfrs)
Scholle IPN Packaging Inc	Merced	Truck-Transporting
Sensient Natural Ingredients	Livingston	Flavoring Extracts (whls)
University of Ca-Merced	Merced	Schools-Universities & Colleges Academic
Weaver Union School District	Merced	Schools
Werner Co	Merced	Ladders-Manufacturers
Western Marketing & Sales	Atwater	Farms
Yosemite Wholesale Warehouse	Merced	Warehouses

Source: California State Employment Development Department

Conclusion

Population estimates for Merced County indicate continued moderate but steady growth for the area. High unemployment exists in Merced County. The primary economic base of the county is anticipated to remain agricultural with related higher seasonal unemployment. The 2016 average unemployment rate in Merced County was 10.5 percent. The long term economic trend for Merced County is anticipated to remain at moderate population and employment growth, trending with the Central Valley economy.

NEIGHBORHOOD PROFILE

Location

The subject property is located at 1137 B Street in the City of Merced. The property is approximately ¾ of a mile southwest of the central business district in the City of Merced and within ½ of a mile of State Highway 99 to the northeast.

Composition/Uses & Trends

Land uses in the neighborhood reflect primarily residential, public use and professional office properties. The property is adjacent office buildings, an apartment complex to the west and cemetery to the east. Transportation linkages, including a well-developed regional highway system serving the area, rail service, and the Merced Regional Airport, are all conducive to continued commercial development in the area. The UC Merced campus located in the northern portion of the City of Merced has been the center of most recent residential development in the area; with some commercial development occurring approximate to the Highway 99 corridor. UC Merced is undergoing a \$1.3 billion-dollar expansion expected to be completed in 2020, increasing student capacity to 10,000 students. Economic trends in the subject neighborhood are stable to positive. Long-term trends are considered positive. The subject neighborhood is well positioned for future growth.

Public Services & Utilities

The subject neighborhood is served adequately by local elementary, middle and high schools in the City of Merced. Public higher learning centers are Stanislaus State University in Turlock, Fresno State University and UC Merced. Police and Fire protection is provided by the City of Merced.

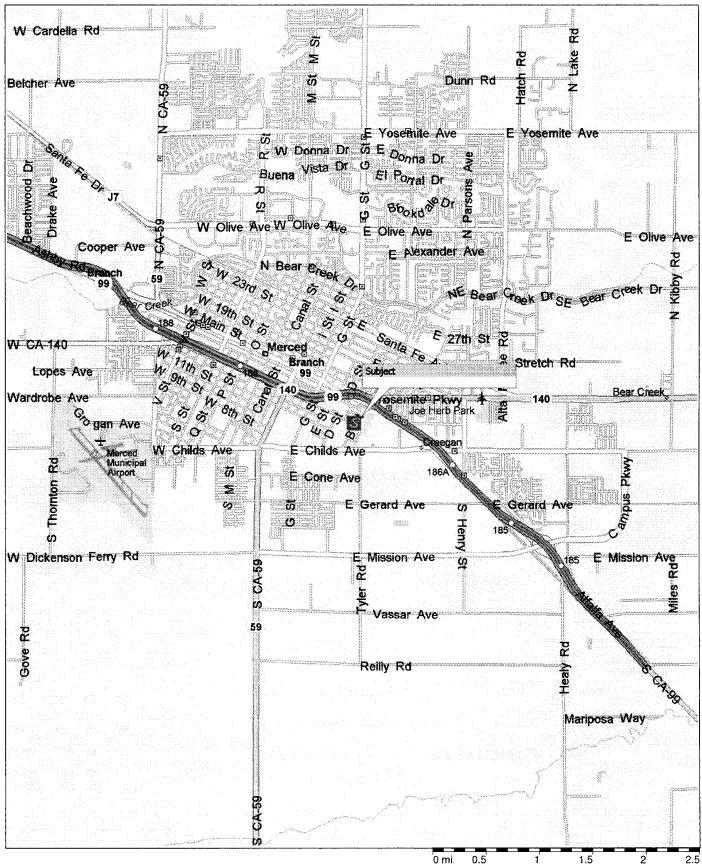
Local medical services are available in the City of Merced with Mercy Medical Center Merced Hospital located in northern Merced.

Public utilities are available in the neighborhood. The subject property has public water, sewer and trash removal provided by the City of Merced. Electrical and natural gas service is provided by PG&E and Merced Irrigation District. Telephone services are available from a number of providers.

Conclusion

The subject neighborhood is an average quality commercial area in the City of Merced. The long-term economic future of the area appears good. Overall the neighborhood appears to be in a stable stage of development. There is still low demand for residential and commercial development land due to the resale values and supply of existing properties and the current costs of new development. However, development is in the beginning stages of recovery, with several new projects underway and a continuing upward trend. It is anticipated that long-term employment and economic growth of the neighborhood will trend in relationship with the regional economy.

NEIGHBORHOOD



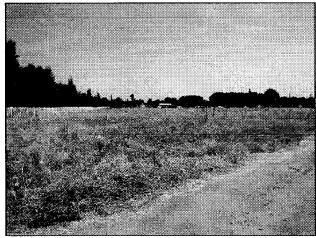
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SUBJECT DESCRIPTION

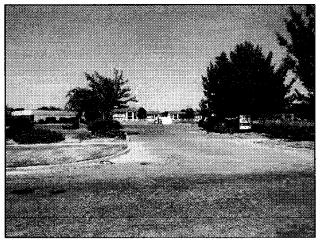
SUBJECT PHOTOGRAPHS



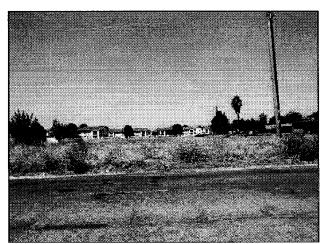
AERIAL PHOTOGRAPH – SUBJECT PROPERTY APPROXIMATE BORDERS (SOURCE: GOOGLE EARTH, DATED 5/2/17)



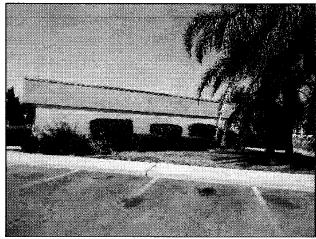
SUBJECT PROPERTY – SOUTHERN PORTION FROM SOUTHERN BORDER



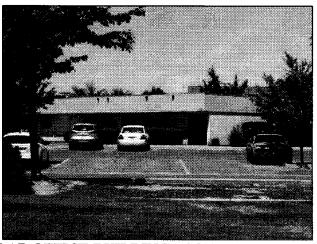
SUBJECT PROPERTY - NORTHERN PORTION



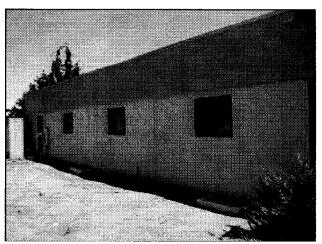
NORTHERN BORDER FROM NORTHWEST CORNER



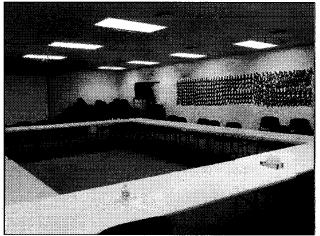
MODULAR OFFICE BUILDING – EASTERN ELEVATION



MODULAR OFFICE BUILDING – SOUTHERN ELEVATION



MODULAR OFFICE BUILDING – NORTHERN ELEVATION



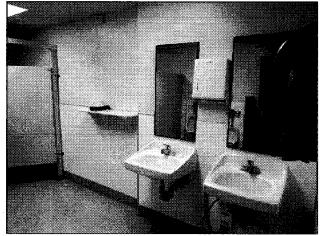
OPEN OFFICE/CONFERENCE AREA



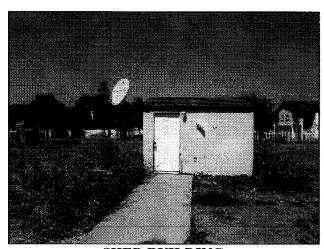
TYPICAL OFFICE AREA



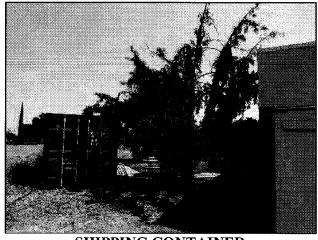
KITCHENETTE



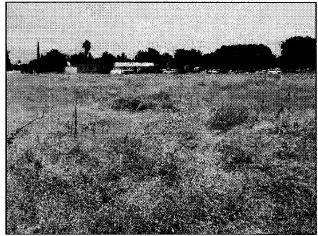
RESTROOM



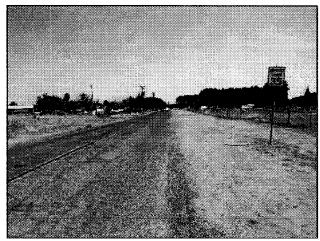
SHED BUILDING



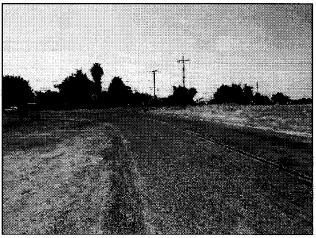
SHIPPING CONTAINER (PERSONAL PROPERTY NOT INCLUDED IN VALUATION)



CURRENT STORM DETENTION BASIN - SOUTHERN PORTION OF PARCEL



B STREET - VIEW NORTH SUBJECT ON LEFT



B STREET - VIEW SOUTH SUBJECT ON RIGHT

SITE ANALYSIS

Owner of Record:

County of Merced, a body politic and corporate

Location:

1137 B Street, Merced CA 95341

Merced County

Legal Description:

See Grant Deed in Addenda

Assessor's Parcel Number / Assessed Value and Taxes (2014-2015):

The subject is owned by a public entity and has been historically exempt from property taxes.

Size and Shape:

5.06 acres/220,414 SF - Irregular

General Plan:

C-O (Commercial Office)

Zoning:

P-D Zone (Planned Development):

This zone is intended to provide a zone which can permit and enjoin logical or desirable development and carry out the objectives of the general plan by:

- A. Permitting the initial development or enlargement of commercial districts in close proximity to residential areas while protecting the character and quality of adjacent residential uses;
- B. Permitting clusters of multiple-family developments in appropriate locations within single-family zones with suitable controls imposed;
- C. Providing for the location, under suitable safeguards of desirable types of research and manufacturing uses adjacent to and within commercial or residential areas;
- D. Permitting planned developments on a large scale which would include a combination of any two or all of the above mentioned developments;
- E. Permitting the redevelopment of parcels for residential, commercial, or industrial purposes or any combination thereof, in areas already built upon, but which now have marginal development.

Flood Zone:

Zone X – Panel #060191 0440 G, Dated 12/2/2008

(Area of minimal flood hazard, usually depicted on FIRMs as

above the 500-year flood level)

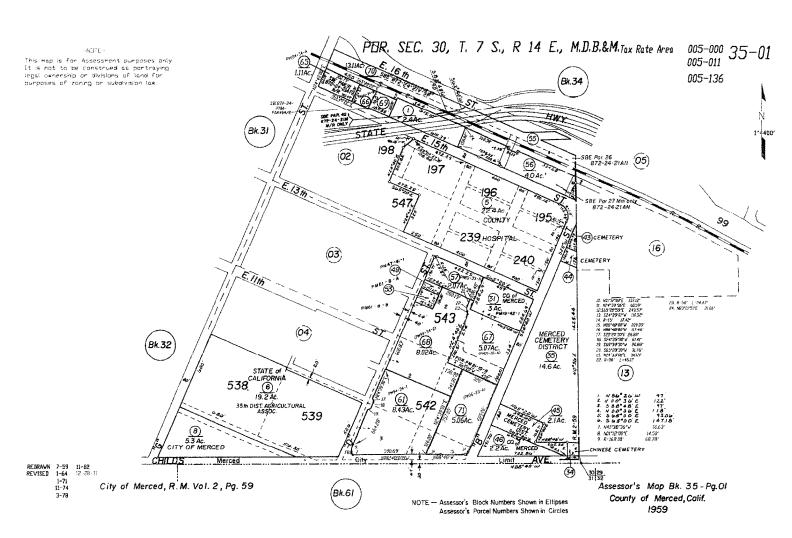
Seismic (Alquist-Priolo):

The subject is not located within an Alquist-Priolo Earthquake

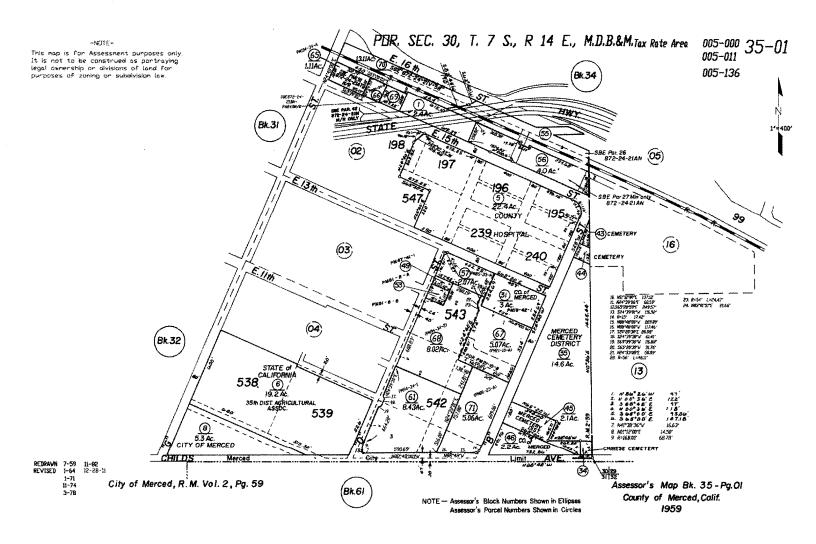
Fault Zone.

Environmental Hazard:

None known or observed (See Extraordinary Assumptions).



Subject (Portion of APN)



<u>Topography</u>: Generally level

Access: Site access is good from B Street.

Frontage: Approximately +/- 609.06' of frontage along B Street.

Street Improvements: Asphalt paved street, partially with curbs, gutters, sidewalks and

street lights.

<u>Utilities:</u> Electricity, telephone, gas, municipal water and sewer to site.

Easements: Typical public utility and street easements are assumed: a

Preliminary Title Report was not available for review. See

Extraordinary Assumptions.

Apparent adverse easements, conditions, encroachments or other adverse conditions:

No adverse easements or encroachments were observed. It is an Extraordinary Assumption that there are no title issues affecting

the valuation (See Extraordinary Assumptions).

Landscaping: The subject has average quality landscaping including bushes and

trees along perimeter and grass, bushes and trees around modular

office structure.

Site Improvements: Asphalt paved parking lot with curbs, gutters, sidewalks,

landscaping, and Parking lot lights (See Photos). Most of these site improvements may be able to be utilized in the future development of a permanent office structure. Utilization of the existing improvements would depend on a number of factors such as the

design of new structures and building or zoning requirements.

Functional Adequacy & Utility:

The City of Merced plans to acquire a portion of the subject for a neighborhood storm detention project. The subject was previously appraised with a 1.24 acre detention basin being developed on the southern portion of the subject, and granted to the City of Merced; reducing the land available for development. Basic land prep was completed (basic excavation and storm pipe noted). We have been asked to value the parcel as a whole (available for development),

and dis-regard the prior project.

The city is re-evaluating its storm drainage project and the required size of its acquisition on a portion of the subject (see Site Analysis). We spoke to representatives in the City Planning Department (Francisco Mendoza, planner) and the Engineering Department (Steve Son). They stated that development on the subject is on hold while they determine the required size of the storm drainage system, in regards to their larger project.

The site is improved with an asphalt parking lot and temporary modular office building. A typical buyer would most likely develop the site with permanent office buildings and utilize the modular building as a temporary use or rent for its remaining economic life. The site is fully functional for a commercial office or retail use (see Extraordinary Assumptions).

IMPROVEMENT ANALYSIS

The subject is improved with a modular office building that is 60' x 71' or 4,260 SF (See Floor Plan on following page). The measurements from the Floor Plan were confirmed by the appraiser. The modular office construction is considered to be low-cost and short-lived as compared to typical construction. Actual age of the modular office building was unknown and estimated based on a review of satellite photos. Construction is estimated at approximately the year 2000. The modular structure is detailed further in the chart below:

Chronological Age (Year Built): 17 Years (2000, estimated)

Estimated Effective Age: 17 Years

Estimated Remaining Economic Life: 13 Years

Overall Condition: Average

Stories: One

Class of Construction: Modular

Construction Quality: Low Cost

Exterior Walls: Stucco

Roof (Frame / Covering): Metal / Composition Roof

Foundation: Concrete Stem Wall

Interior Wall Covering: Vinyl

Ceiling: Acoustic Tile

Floor Coverings: Carpet, Vinyl, Linoleum

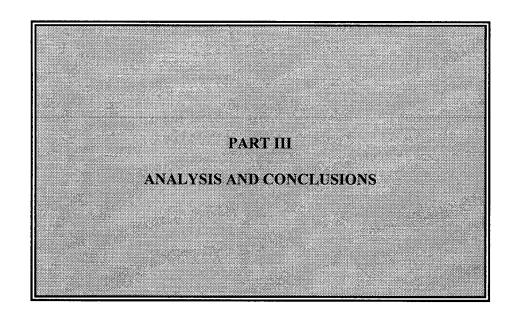
Lighting: Florescent

HVAC: Floor Mounted HVAC

Miscellaneous Improvements:

There is one 12' x 12' (144 square feet) wood shed near the subject. The shed is considered average quality and average condition. The building site area is serviced by an asphalt paved parking area and driveway in front of the modular office. The site has an average level of landscaping and site improvements (See Site Analysis Section).

Attachment A: Floor Plan OVERHANGS ON ROOF, SEE CONSTRUCTION NOTES FOR SIZES. 0 OFFICE #1 OFFICE OFFICE OFFICE DRAFTSTOP S 200 mg/ OFFICE #5 REST ROOM H35 132 1374 HATCI HIGH CLUP **V** OPEN OFFICE AREA



HIGHEST AND BEST USE

The term "Highest and Best Use", as used in this report, is defined as follows:

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value."

In estimating highest and best use, there are essentially four criteria:

- 1. **Physical Possibility:** What uses of the property in question are physically possible, given its physical characteristics?
- 2. <u>Legally Permissible</u>: What uses are permitted by zoning, deed restrictions, and under other land use regulations on the property in question?
- 3. **Financially Feasible:** Which physically possible and legally permissible uses will produce an economic return to the owner of the property?
- 4. **Maximally Productive:** Among the uses, after the above criteria are examined, which will produce the highest net return or the highest present worth?

The criteria are to be applied to the improved and to the vacant property. In estimating a highest and best use, the site is analyzed:

- 1. As if vacant and available for development and
- 2. As is presently improved

AS IF VACANT ANALYSIS

In accordance with the definition of highest and best use, it is appropriate to analyze the site as it relates to legally permissible, physically possible, financially feasible, and maximally productive as it relates to anticipated market conditions.

<u>Physically Possible</u>: The size, shape, and topography affect the uses to which the land can be developed. The utility of a property will depend upon such other factors as its frontage and depth. Irregularly shaped properties may cost more to develop and may have less utility than regularly shaped property of the same total area. The subject appears to be physically adaptable to a variety of uses, limited only by legally permissible constraints.

<u>Legally Permissible:</u> Private deed restrictions, zoning regulations, leases, building codes, historical district controls, and environmental regulations often preclude many possible highest and best uses. The subject is zoned PD (Planned Development), with a Commercial Office General Plan. The zoning allows for a wide range of potential uses. See Improvement Analysis.

¹The Appraisal of Real Estate, Thirteenth Edition, 2008

<u>Financially Feasible</u>: Any property use that is capable of producing a positive rate of return is believed to be feasible. Factors determining which property uses are feasible include those which determine the legally permissible and physically possible uses. Other important factors to consider are the location, adjacent property uses, and the neighborhood's characteristics. These factors, along with appropriate market information, assist in the analysis of what returns could prudently be expected from the various alternative property uses.

The area surrounding the subject consists of residential, public use and professional office uses. A wide range of use as described by zoning limitations are considered financially feasible.

Maximum Productivity: The capital investment required to develop the subject as though vacant would be different for various uses. When invested capital varies among alternative uses, the income from each use must be related to its invested capital base by calculating the rate of return. The use producing the highest rate of return to the land is the highest and best use of the property as vacant. The maximally productive use is considered a commercial use within the range of financially feasible uses. The specific maximally productive use determination is beyond the scope of the appraisal.

Conclusion of Highest and Best Use - As If Vacant

Based on the foregoing discussion, the highest and best use of the subject site, as though vacant, is concluded to be development to a commercial use within the range of uses allowed by zoning.

As Improved -"As-Is"

The site is improved with a modular office structure that is considered an interim use, and asphalt paved parking lot with curbs, gutters, sidewalks, landscaping and parking lot lights.

The "As Improved" analysis will concentrate on determining the viability of the existing use. The five possible alternative treatments of the property are discussed below:

Demolition/Removal - One alternative would be to remove the site improvements and modular office, creating a vacant site. This is physically possible, and legally permissible, but is not financially feasible or maximally productive. The value of the property, as improved, exceeds the value of the land as vacant for the typical buyer. Additionally, the modular office has an estimated remaining effective life of 13 years and may serve as a temporary office during construction or have a possible rental value during its remaining life. Additionally, the parking and site improvements may have value to a potential buyer.

Expansion – The subject property is partially improved to a parking lot and modular office. The modular office is low-cost and not suitable for expansion. The typical buyer would not expand, but demolish the existing improvements or utilize as an interim use and construct additional permanent office space.

Conversion – Any permanent structure or development can be converted to an alternative use at a cost. The subject is not improved with any permanent structures. The modular office is considered a low-cost structure and has no conversion value.

Renovation – The subject parking lot is in average condition. Renovation is not necessary. The typical buyer would most probably demolish the low-cost modular office or utilize temporarily until the end of its economic life, rather than consider renovation.

Continued Use "As-Is" - The subject has a greater value as vacant and ready for typical development. Continued use "As-Is" as a parking lot is considered a viable option with interim use of the modular office building.

<u>Conclusion of Highest & Best Use - As Improved</u>: Based on the foregoing discussion, the highest and best use of the subject site as improved is concluded to be a probable Continued use "As-Is" of the parking lot with interim use or demolition of the modular office building and development of the site to a commercial use allowed by zoning.

MARKET OVERVIEW AND TREND ANALYSIS

The subject is zoned planned development, with an office general plan designation; located in the City of Merced in Merced County, part of the Central Valley market. Specific statistical data was limited for the City of Merced. Trends from neighboring Central Valley communities are considered generally reflective of market trends in the subject's market area and type of development.

Market conditions adjustments were based on (1) Business Forecasting Center at the University of the Pacific Eberhardt School of Business, (2) Colliers International office market news and statistics, (3) Loopnet.com research, as applicable, (4) Discussions with real estate agents familiar with the area, (5) and sale and re-sale data for Comparable Sales in this report.

The following information is provided by the Business Forecasting Center at the University of the Pacific Eberhardt School of Business, <u>California and Metro Forecast</u>: May 30, 2017

- The California economy continues to perform well, in spite of an uncertain policy environment.
- Unemployment should decline to 4.5% for by the end of the year, and stabilize in 2018 and 2019.
- Nonfarm payroll jobs will grow 1.7% in 2017 a decrease in growth. The pace of growth will stabilize around 1.4% in 2018 and beyond.
- California population growth has slowed from approximately 350,000 per year to 250,00 per year, which should continue through 2020.
- The San Francisco area should maintain the fastest regional job growth, over 2% in 2017 and 2018, despite unemployment below 3% and slow growth in housing stock. This is partially due to workers re-locating to the Central Valley.

The following table provides a projection of the employment change and unemployment rate to 2020. The data indicates that the unemployment rate in Merced, Stockton and Modesto MSA will remain above 6% through 2020.

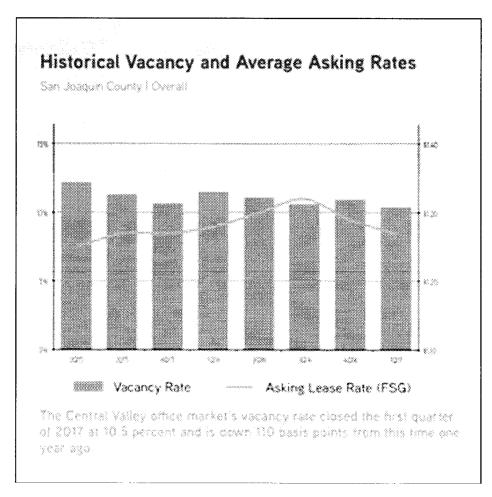
Metro Area	Nonfarm Payroll Employment (% change)				Unemployment Rate (%)					
	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020
Sacramento	3.5	1.1	1.5	1.6	12	5.2	4.7	4.5	4.5	4.6
Stockton	3.4	1.8	1.5	1.3	1.0	8.0	7.3	6.8	6.7	6.8
Modesto	3.3	2.1	1.2	1.3	0.9	8.5	7.7	7.6	7.5	7.7
Merced	2.6	0.4	1.9	1.9	1.6	10.4	9.8	9.3	8.8	8.6
Fresno	3.4	1.9	1.4	1.4	1.1	9.4	8.8	8.4	8.1	8.1
California	2.7	1.7	1.4	1.1	0.9	5.4	4.8	4.5	4.5	4.7

Sacramento MSA includes Sacramento, El Dorado, Placer, and Yolo counties. Stockton, Merced, Fresno and Modesto MSAs correspond to San Joaquin, Merced, Fresno and Stanislaus counties.

Overall Office Market (Central Valley):

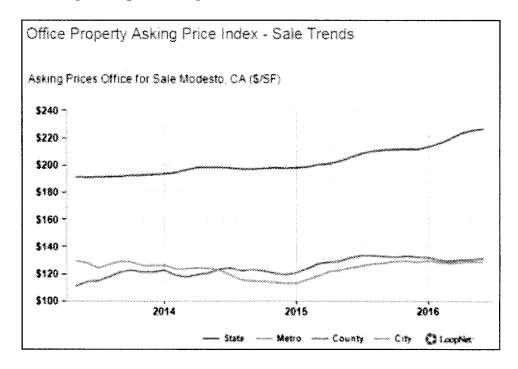
- The East Bay office market is continuing to report ongoing rent growth and absorption. Overall vacancy rate in the Tri-Valley is at 10.4 percent and Class A asking rents are pushing \$3.00 per square foot on a full service basis. The Central Valley is starting to follow suit.
- The Central Valley's office market vacancy rate is down 110 basis points over last year, to 10.5 percent in the first quarter of 2017.
- San Joaquin County had a net absorption of 49,103 square feet for the quarter.
- The average asking lease rate increased from \$1.45/sf in Q1 2016 to \$1.49/sf in Q1 2017, or 2.76% year over year for Class A space.
- The prices per square foot for office space averaged \$156.07 per square foot, and the average cap rate was 6.23%.
- Year over year, the vacancy rate for Class B and C space has decreased to 9.0% and 4.9%, respectively.
- The Stockton submarket vacancy rate fell to 12.1 percent in the first quarter of 2017. The average asking lease rate for all product classes in Stockton was \$1.33 per square foot per month, \$0.05 higher than this time one year ago.

The following graph is provided by Colliers International Stockton Market Research Office Report 1Q 2017 for all office sectors: It compares historical vacancy (blue columns) and asking rates (yellow line).

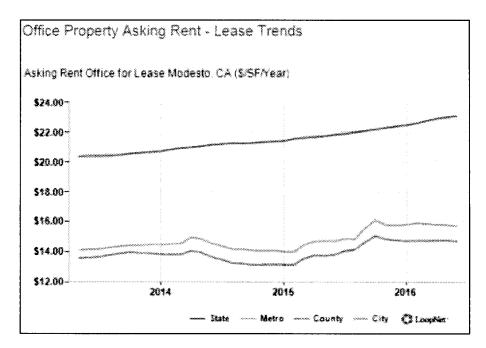


Loopnet.com Data:

The following data is provided by LoopNet for the Modesto MSA. The data provides the average asking price and average lease price through June 2016.



		Jun 16	vs. 3 mo. prior	Y-0-Y
8885	State	\$226.32	+3.3%	+10.0%
808	Metro	\$131.12	+1.4%	-0.7%
996	County	\$131.12	+1.4%	-0.7%
3330	City	\$128.61	+0.7%	+3.2%



	Jun 16	vs. 3 mo. prior	Y-O-Y
■ State	\$23.08	+1.3%	+5.7%
Metro	\$14.69	-0.3%	+6.4%
- County	\$14.69	-0.3%	+6.4%
∞ City	\$15.71	-0.9%	+6.9%

Based on the LoopNet information, the office list price average, three months prior to June 2016 increased 0.7% (0.23/mo.), while the previous 12 months prior to June 2016 they increased 3.2% (0.27/mo). The lease rates for office space decreased 0.9% (0.3%/mo) three months prior to June 2016, while they increased 6.9% (0.58%/mo) 12 months prior to June 2016.

Discussion with Real Estate Agents:

During the course of this appraisal, market participants, city officials and real estate brokers were contacted regarding the market conditions for the subject's property type. The following is a summary of some of the opinions and statements.

Steve Tinetti of Tinetti Realty Group (209) 261-3684 was contacted by Ryan Heiny of K. R. McBay Company in August 2017 regarding the market for development land in the subject's market area. Mr. Tinetti stated that the market for development land is strengthening and attributes the increase to an increase in job growth. He believes that the job growth and development is being fueled by a \$1.3 billion-dollar expansion project of UC Merced. He sees development centered around the UC area and migrating through the city. Mr. Tinetti notes that many of the prime development locations in the downtown area have now been developed, with few reaming undeveloped well located parcels.

Dan Gallagher of Coldwell Banker Real Estate (209) 777-5626 was contacted by Ryan Heiny of K. R. McBay Company in August 2017 regarding the market for development land in the subject's market area. Mr. Gallagher, was very familiar with the market area. He is currently working with a developer on a retail project at Campus Parkway and Gerrard. He stated that development is picking up in the area. Mr. Gallagher believes there is increasing demand for development land with enough activity that the City of Merced has become unresponsive to requests, due to a large backlog. Mr. Gallagher also stated that Walmart will be building a location just south of E. Childs Ave. Despite the increasing demand, prices have remained flat over the past few years. Mr. Gallagher stated that the development timeframe for his retail project is 5-7 years, and based on its location and demand.

Ranjeet Singh of Gonella Real Estate (209) 261-6164 was contacted by Ryan Heiny of K. R. McBay Company in August 2017 regarding the market for development land in the subject's market area. Ms. Singh stated that the market for development land is generally stable. She is currently on the board of directors for the local MLS and sees interest in development increasing.

Neil Ballweber of Tinetti Realty Group (209) 261-3684 was contacted by Ryan Heiny of K. R. McBay Company in August 2017 regarding the market for development land in the subject's market area. Mr. Ballweber stated that the market for development land is strong and has not seen a price increase in land over the prior several years.

Jay Fiorini of Fiorini Real Estate (209) 495-2794, was contacted by Ryan Heiny of K. R. McBay Company in August 2017 regarding the market for development land in the subject's market area. Mr. Fiorini stated that the market for development land has been flat, and that a parcel he sold in 7-2015 in Turlock, just appraised last month for the same value as its sale price, as support for his statement.

Additionally, numerous brokers and market participants were contacted by Ryan Heiny of K. R. McBay Co. in April of 2017 regarding the market for industrial properties in the subject's greater market area. Many of the participants stated that property values seem to be increasing over the prior two years for industrial buildings in the Stockton MSA with particular strength from the Tracy region and increasing the nearer the Bay Area. The Bay Area market trends seem to be migrating east as noted in the Colliers International and Eberhardt School of Business reports. One of the participants notes that leasing activity was particularly strong in 2016 and may have slowed slightly. Although the subject's specific market is further from the Bay Area and the land is zoned Planned Development (office). It is indirectly influenced by market conditions throughout the San Joaquin Valley, with some development crossover from light-industrial projects.

Brokers that were surveyed in April 2017, included the following:

Rob Stevens of RE/Max Executive (209) 985-3776 Briana office manager, Tami Gosselin of Century 21 M&M Associates (209) 557-2609 Kuldip Hundal of Royal Realty (209) 598-5939

Sale-Resale Data:

Relevant sale-resale data was not available.

Market Conditions Summary:

The following table is a tabulation of the above market area reports in order to establish a market conditions adjustment for the subject property.

Source	Building Type	MSA	Data Type	Start	End	Change	Per Month
Colliers	Office	San Joaquin	Asking Lease	1Q 16	1Q 17	3.9%	0.33%
LoopNet	Office	Modesto	Asking Sale	2Q 15	2Q 16	3.2%	0.27%
LoopNet	Office	Modesto	Asking Lease	2Q 15	2Q 16	6.9%	0.58%
						Avg.	0.39%

The cumulative data provides an indication of a market increase in asking prices. The above data indicates an average increase of approximately 0.39% per month for most of 2015 and 2016. The data tends to indicate a market that has been strengthening.

Conclusion:

A market conditions adjustment was researched based upon an array of available data for the subject's market area. Sale-resale data was not available and broker opinion supports a conclusion of no adjustment. The data shows a market that is increasing at a modest rate, however, this data is specific to improved properties. Market Participants noted a strengthening market for development land that has yet to impact prices. No Market Conditions adjustment is concluded based on the lack of area specific reports, with emphasis on comments from market participants that were specific to the subject area and type.

MARKETABILITY

Definition of Marketing Period

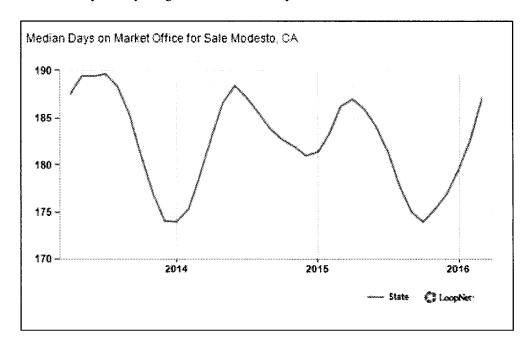
The Marketing Period is defined as the amount of time necessary to expose a property on the open market in order to achieve a sale. Implicit in this definition are the following conditions:

- The property will be actively exposed and aggressively marketed to potential purchasers through marketing channels commonly used by sellers of similar types of properties.
- The property will be offered at a price reflecting the most probable mark-up over market value used by sellers of similar properties.
- A sale will be consummated under the terms and conditions of the definition of market value stated in this report.

Estimate of Reasonable Marketing Time

Sale #2, #4 and #5 indicated days on market. Sale #2 was on the market for one day only. Sale #4 showed a marketing time of 777 days and went through several price reductions. Sale #5 was on the market for 50 days. The sales used in this report indicated an averages days-on-market of 276 days and the longest marketing period sale went through price reductions before reaching the market price.

The following graph from Loopnet.com illustrates the median days on market for office properties in the State of California. Median Days on market peaked in mid-2013 at approximately 190 days and has since remained in a fairly steady range of 173 to 188 days. See chart below:



Based on the limited data, a marketing time of less than 12 months is considered reasonable.

Exposure Time

Inherent in the definition of market value and marketing time is an adequate amount of *exposure* to the open market. Two excerpts from the definitions of both market value and marketing time are listed as follows:

Market Value:

"...a reasonable time is allowed for *exposure* in the open market."

Marketing Time:

"...the property will be actively *exposed* and aggressively marketed to potential purchasers through marketing channels commonly used by sellers of similar type properties."

Exposure time, as defined by the Dictionary of Real Estate Appraisal, Fourth Edition is stated as follows:

"The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market..."

The exposure time for the subject property is estimated to be roughly equal to the marketing time previously stated (i.e., less than 12 months).

THE APPRAISAL PROCESS

The appraisal process is the orderly program in which the data used to estimate the value of the subject property are acquired, classified, analyzed, and presented. The first step is defining the appraisal problem - i.e., identification of the real estate, the effective date of the value estimate, the property rights being appraised, and the type of value sought. Once this has been accomplished, the appraiser collects and analyzes the factors that affect the market value of the subject property. These include area and neighborhood analysis, site and improvement analysis, highest and best use analysis, and the application of the three approaches to estimating the property value: the Cost Approach; the Sales Comparison Approach; and the Income Approach.

In the Cost Approach to value accrued depreciation is deducted from the cost new of the improvements, and this added to the land value. The resultant figure indicates the value of the whole property. Generally, the land value is obtained through the Sales Comparison Approach. Replacement cost new of the improvements is estimated on the basis of current prices for the component parts of the building less depreciation, which is computed after analyzing the disadvantages or deficiencies of the existing building as compared to a new building.

The Sales Comparison Approach is used to estimate the value of the land as if vacant and/or the whole property as improved. The appraiser gathers data on sales of comparable properties and analyzes the nature and condition of each sale, making logical adjustments for dissimilar characteristics. Typically, a common denominator is found. For land value, this is usually either a price per square foot or price per acre. For improved properties, the common denominator may be price per square foot, price per unit, or an effective gross income multiplier.

At times, the available market data will not allow for quantitative adjustments (dollar or percentage) based upon such techniques as paired sales analysis, cost-based estimates, statistical, or survey techniques. Qualitative adjustments are then applied to the Comparable Sales to rank the sales and bracket the value of the subject. The Sales Comparison Approach gives a good indication of value when sales of similar property are available.

The Income Approach is predicated on the assumption that there is a definite relationship between the amount of income a property will earn and its value. This approach is based on the principle that value is created by the expectation of benefits derived in the future. The anticipated annual net income of the subject property is processed to produce an indication of value. Net income is the income generated before payment of any debt service. The process of converting into value is called capitalization, which involves dividing the net income by a capitalization rate. Factors such as risk, time, interest on the capital investment, and recapture of the depreciating asset are considered in this rate. The appropriateness of this rate is critical, and there are a number of techniques by which it may be developed.

A final step in the appraisal process is the reconciliation or correlation of the value indications. In this process, the appraiser considers the relative applicability of each of the three approaches used, examines the range between the value indications, and places major emphasis on the approach that appears to produce the most reliable solution to the specific appraisal problem. The purpose of the appraisal, the type of property, and the adequacy and reliability of the data are analyzed; these considerations influence the weight given to each of the approaches to value. In analyzing, it can be readily observed that most of the information pertaining to the fair market value of the subject property must be derived from the market place because the appraiser anticipates the actions of buyers and sellers in the market.

Exclusion of Approaches

Based on the relatively unique characteristics of the subject with smaller, lower value building improvements of a low cost, interim use and relatively higher land value, the Cost Approach was considered the most applicable approach. The Sales Comparison Approach was not applicable based on the lack of relevant sales data for the subject lower cost modular office building improvements. The Income Approach was not applicable based on the low income potential of the land and building improvements in relationship to the total value. The Cost Approach alone produces a credible valuation.

COST APPROACH

Methodology

This approach consists of an analysis of the property's physical value. The principle of substitution is the underlying rationale of this approach. The principle is based upon the concept that a prudent person would not pay more for a property than the cost of constructing, without undue delay, an equally desirable and useful property.

In the Cost Approach, the following steps are employed to reach an estimate of value:

- 1. Estimate land value as if vacant;
- 2. Estimate the improvements' replacement cost new, including indirect costs;
- 3. Estimate the necessary developer's overhead and profit for the type of property being appraised, including profit on the land;
- 4. Add replacement cost new and profit to calculate the total cost new of the property;
- 5. Estimate accrued depreciation, if any, from physical, functional, and external causes;
- 6. Deduct accrued depreciation from the total cost new of the property to estimate the current value by the Cost Approach;
- 7. Add land value:
- 8. Adjust the individual fee simple value, if necessary, to reflect the property interest being appraised.

In this report the appraiser will consider the costs on a replacement cost basis. Replacement cost is defined as:

"The cost of construction at current prices of a building having utility equivalent to the building being appraised but built with modern materials and according to current standards, design and layout."

This definition is modified as appropriate and applied to permanent plantings.

The next step in the Cost Approach is to estimate accrued depreciation. Accrued depreciation is defined as the difference between reproduction costs new as of the date of appraisal, and the present contributory value of the improvements. Accrued depreciation represents the loss in utility to the subject property compared to that which it would have if it were new and represented the highest and best use of the site. There are four basic types of accrued depreciation:

- 1. <u>Curable Physical Deterioration</u> (Deferred Maintenance) represents items in need of immediate repair, which a typical buyer would consider necessary and justified upon purchase.
- 2. <u>Incurable Physical Deterioration</u> is sub-classified into Short-lived and Long-lived:
 - A. <u>Short-lived</u> components are those with remaining economic lives that are shorter than the remaining economic life of the entire building.
 - B. <u>Long-lived</u> components are those with remaining economic lives that are similar to that of the entire building.

- 3. **Functional Obsolescence** constitutes a reduction in utility resulting from the decreased capacity of the structure or a part of the structure to perform its intended function.
- 4. **Economic Obsolescence** (Location or external obsolescence) is usually incurable. This is a case of diminished utility because of negative environmental forces outside the property's boundaries. The method of correcting the problem customarily lies outside the property and its cost is usually excessively expensive.

LAND VALUATION

Land or site value is estimated via the Sales Comparison Approach, which involves the comparison of sales of properties similar to the subject to provide a basis for estimating its value. Elements of comparison are the physical and economic characteristics of properties that cause prices paid for real estate to vary. The differences between the comparable and the subject that could affect their values are considered. The result of this process is to establish a reasonable approximation of the value of the subject as of the date of the appraisal, based on the similarities or dissimilarities of the comparables to the subject.

There are six common elements of comparison that are usually considered in the sales comparison analysis. These are real property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, date of sale (market conditions), and physical and economic characteristics. A range of values of the subject is usually found in this analysis. The appraiser must correlate the range into a final indicated value by selectively rating the comparables as to their overall comparative values.

Several items of comparability are utilized for analyzing the property, land only, and are shown as follows:

Real Property Rights Conveyed: The rights conveyed must be identified, whether Fee Simple Estate or a lesser right in the property.

<u>Financing Terms</u>: This item considers terms that are not typical in the market. This would include below or above current market interest rates, atypical payback periods, seller financing, buy-downs, and exchange influences. If the seller received cash for the property, it is considered a cash basis sale.

<u>Conditions of Sale</u>: This item would include any unusual circumstances surrounding the purchase of a property, including distress sales due to bankruptcy, delinquent taxes, partnership splits, long-standing options, or any other less than arms-length transaction.

Expenditures Made Immediately After Purchase: A knowledgeable buyer considers expenditures that will have to be made upon purchase of property because these costs affect the price that buyer agrees to pay.

<u>Market Conditions</u>: This category reflects changes in market conditions over time. These may be caused by inflation, deflation, fluctuations in supply and demand, and other factors. An economic recession tends to deflate all real estate prices. However, a decline in demand sometimes affects only one category of real estate. Time itself is not the cause of this adjustment; market conditions, which shift over time, create the need for an adjustment.

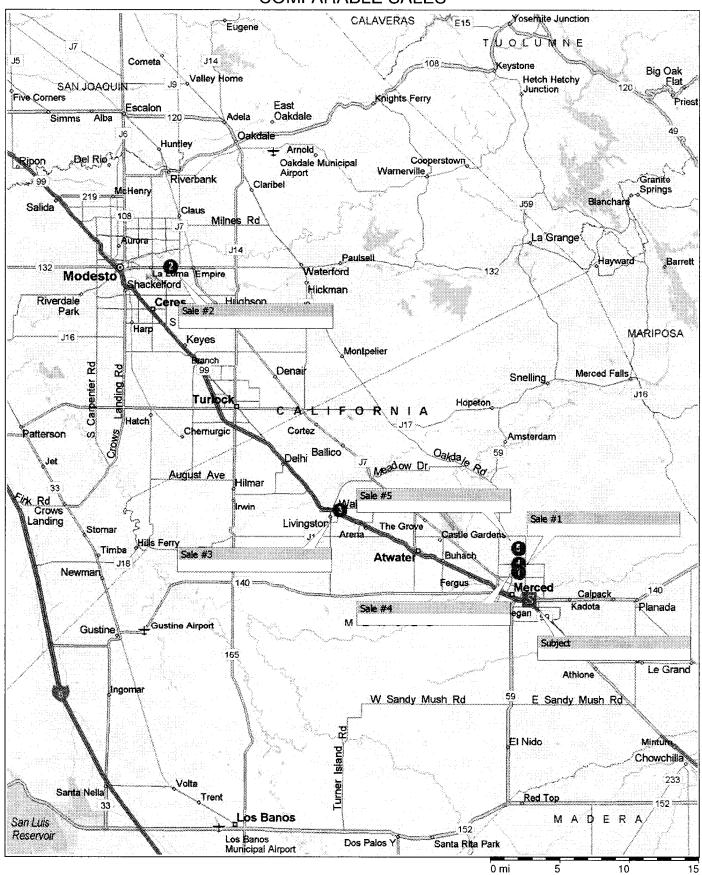
After this **physical and economic** characteristics are considered.

Where possible, paired sales analysis is conducted to abstract adjustments for financing, conditions of sale, market conditions, and physical and economic characteristics.

Research of recent land sales in the subject market area revealed the following sales

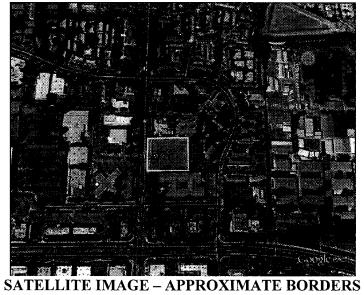
COMPARABLE LAND SALES							
SALE #	LOCATION	SALE PRICE	SALE DATE	ACRES & SF	\$/SF		
1	3172 M Street Merced, CA APN: 236-230-010	\$ 505,000	01/08/16	1.60 AC 69,696 SF	\$7.25		
2	3301 Yosemite Blvd., Modesto, CA APN: 033-089-034, 035, 036	\$ 700,000	03/25/16	3.30 AC 187,308 SF	\$3.74		
3	Pacific Avenue Livingston, CA APN: 047-100-052	\$ 392,000	05/16/16	1.50 AC 65,340 SF	\$6.00		
4	3603 M Street Merced, CA APN: 230-220-055	\$ 710,000	06/03/16	2.60 AC 113,256 SF	\$6.27		
5	Cardella & M Street Merced, CA APN: 230-010-016	\$1,100,000	10/24/16	8.33 AC 362,855 SF	\$3.03		
Subj.	1137 B Street Merced, CA APN: 035-010-071 (Portion)	N/A	N/A	5.06 AC 220,414 SF	N/A		

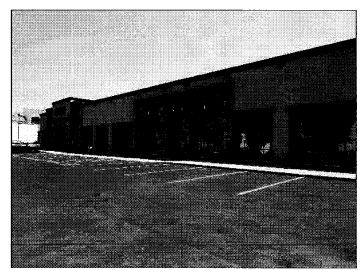
COMPARABLE SALES



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LAND SALE #1





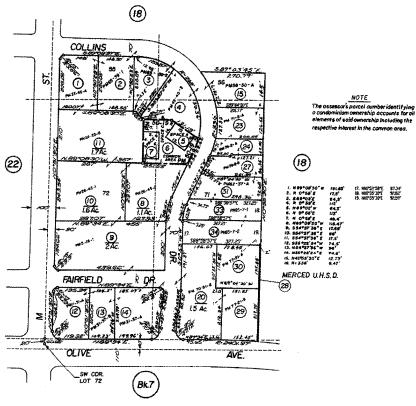
STREET VIEW

POR. SE 1/4 SEC.18,T.75.,R.14E.,M.D.B.&M.

Tax Rate Area 5-05 236-23

1"=200

This map is far Assessment purposes only it is not to be construed as portraying legal ownership or divisions of land for purposes of zoning or subdivision law.



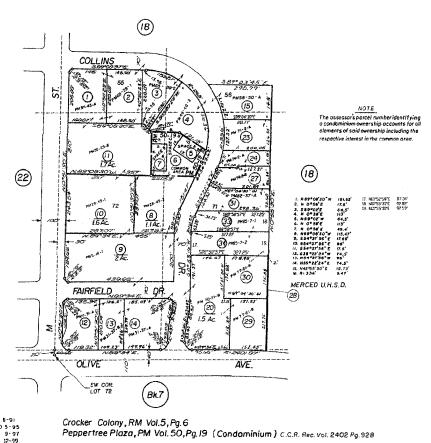
DRAWN 8-91 REVISED 5-95 9-97 Crocker Colony, RM Vol.5, Pg. 6
Peppertree Plazo, PM Vol.50, Pg. 19 (Condominium) C.C.R. Rec. Vol. 2402 Pg. 928

Assessor's Map Bk.236 Pg.23 County of Merced, Calif. 1991

NOTE—Assessor's Block Numbers Shown in Ellipse: Assessor's Parcel Numbers Shown in Circle: POR. SE 1/4 SEC.18, T.75., R.14E., M.D.B.&M.

Tax Rate Area 5-05 236-23

This map is for Assessment purposes only it is not to be construed as partraying legat ownership or divisions of land for purposes of zoning or subdivision law.



Assessor's Map Bk.236 Pg.23 County of Merced, Calif. 1991

NOTE--Assessor's Block Numbers Shown in Ellipses Assessor's Parcel Numbers Shown in Circles

Sale #1

Commercial Lot Type: Location/Address: 3172 M Street, Merced, CA County: Merced Assessor's Parcel #: 236-230-010 Seller: Puray, Meria E. **Buyer:** CVRC North, LLC. Topography: Generally Level Doc #: 587 **Highest and Best Use:** Commercial Development **Record. Date**: 01/08/16 **Site Utility:** Average Verification: MLS/Realist/Broker Price: \$505,000 **Price/SF:** \$7.25/SF **Conditions of Sale:** None Terms: Cash Site Area: 1.60 AC/69,696 SF Zoning/General Plan: P-D, Planned Development (City of Merced) Access/Visibility: Good Off-sites: Fronts public maintained road, with Curbs, Gutters or Sidewalks **Utilities:** To Site Improvements when sold: None

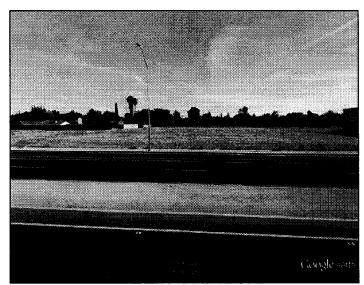
Comments: The details of this sale were confirmed by Janet Bamford at the listing agents' office Gonella Realty (209) 383-2171, the MetroList service and public records via Realist.com. The site has average functional utility, good visibility, good access and represents a commercial lot ready for development. M street is a high traffic commercial corridor in the City of Merced. Surrounding development includes fast food restaurants, retail and fuel stations.

Professional Office Building

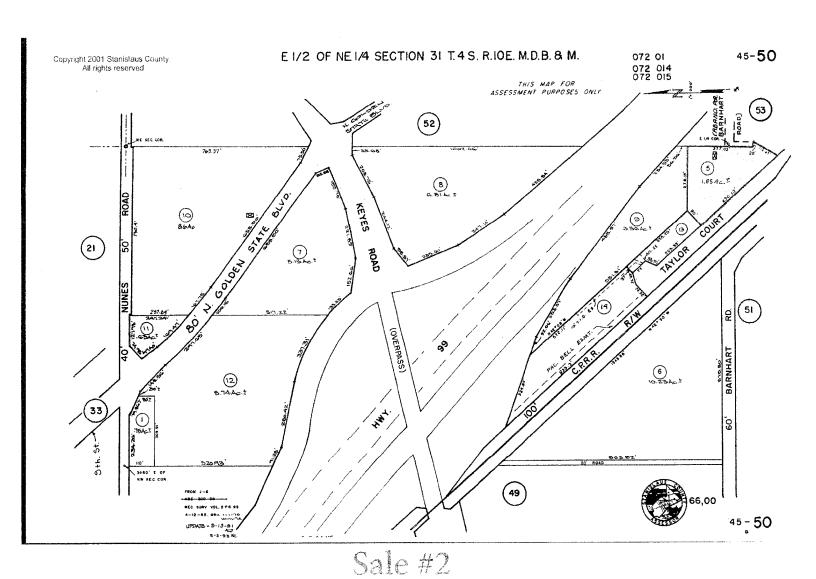
Present Use:

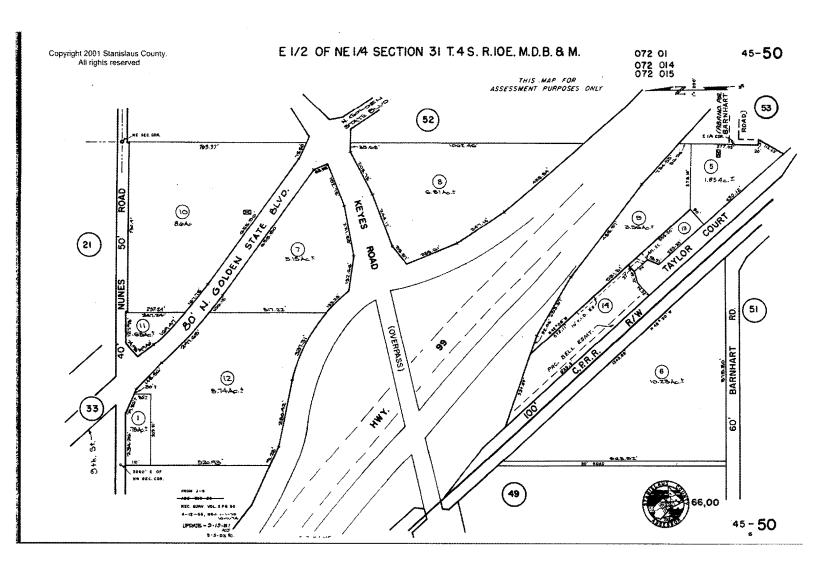


SATELLITE IMAGE – APPROXIMATE BORDERS



STREET VIEW – PROVIDED BY GOOGLE EARTH





Type: Commercial Lot Location/Address/City: 3301 Yosemite Ave., Modesto, CA 95357 County: Stanislaus Assessor's Parcel #: 033-089-034, 035, 036 Seller: Carranza Ents., LLC **Buyer:** TPC CS Holdings I, LLC. Topography: Generally Level **Highest and Best Use:** Commercial Development Record. Date: 3/25/16 Doc #: 21436 **Site Utility:** Below Average Verification: MLS/Realist **Price/SF:** \$3.74/SF Price: \$700,000 **Conditions of Sale:** None Terms: Cash Site Area: 4.30 Acre/187,308 SF Zoning/GP: C-3 Highway Commercial Access/Visibility: Average/Average Off-sites: Fronts public maintained road with curbs, gutters, sidewalks, streetlights. **Utilities:** All utilities to the site.

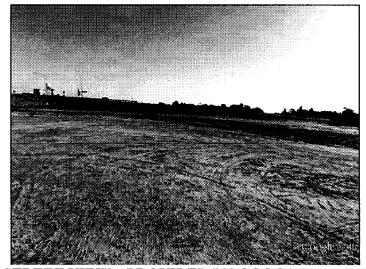
Comments: The details of this sale were unable to be confirmed by a party to the sale and as such it is utilized for secondary support only. According to MetroList, these three adjacent commercial parcels were sold together and ready for commercial development. The property is located in an inferior commercial area of primarily industrial development in the City of Modesto. The lot is flag shaped with a smaller portion of street frontage and functional utility is considered below average.

Vacant

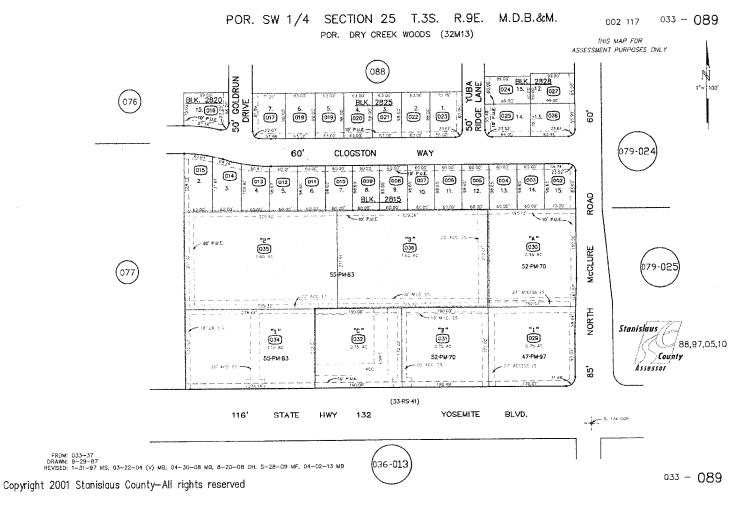
Present Use:



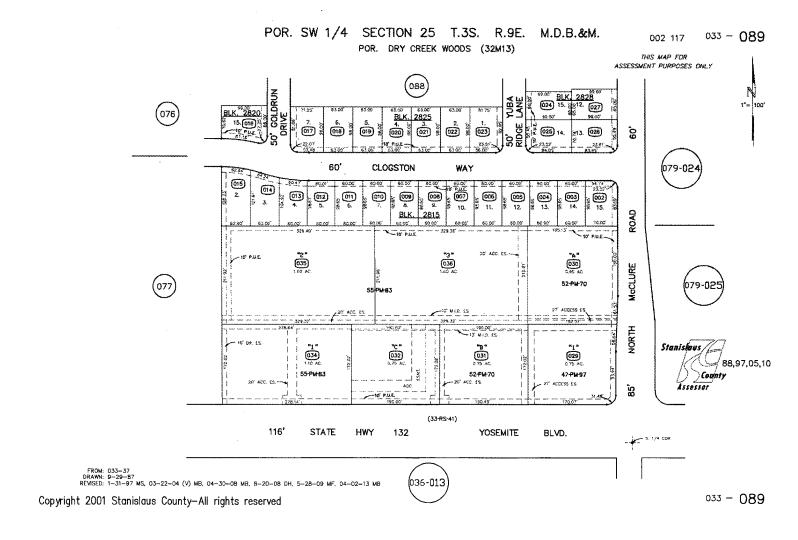
SATELLITE IMAGE – APPROXIMATE BORDERS



STREET VIEW - PROVIDED BY GOOGLE EARTH



Sale#3

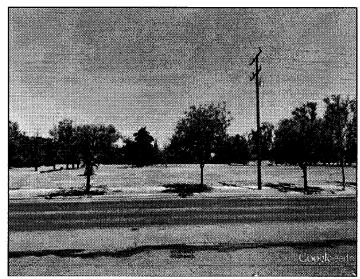


Type: Industrial/Commercial Lot Pacific Avenue, Livingston, CA Location/Address/City: County: Merced **Assessor's Parcel #:** 047-100-052 Seller: JEG Livingston Ranches, LLC. **Buyer:** Singh, Simarjit Topography: Generally Level **Highest and Best Use:** Commercial Development Record. Date: 5/16/2016 Doc #: 15715 **Site Utility:** Verification: MLS/Realist Average Price: \$392,000 **Price/SF:** \$6.00/SF **Conditions of Sale:** None Terms: Cash Site Area: 1.50 Acre/65,340 SF Zoning/GP: M-2 - General Industrial Access/Visibility: Good/Good (Corner Parcel) Off-sites: Fronts public maintained road. No curbs, gutters, sidewalks. **Utilities:** All utilities to the street. Improvements when sold: None **Present Use:** Vacant

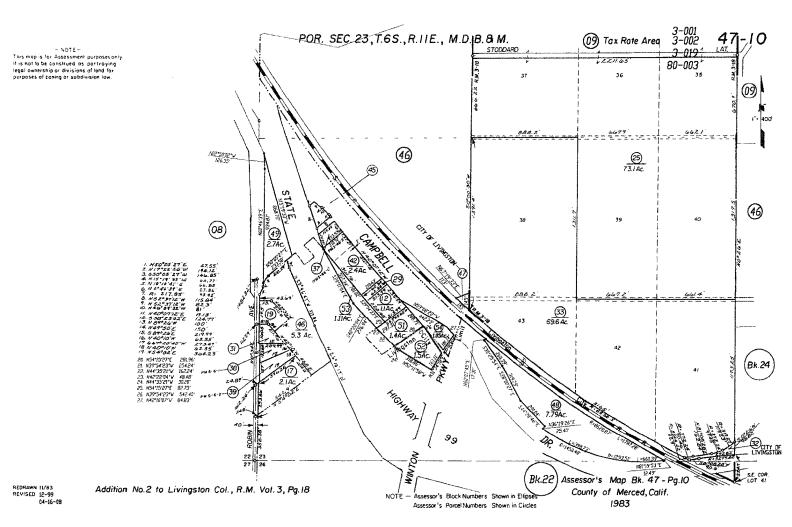
Comments: The details of this sale were confirmed by Fredrick Polanco of Century 21 (209) 725-9100. This sale has good, corner lot visibility and close proximity to Highway 99. The site has average functional utility. This site is zoned for industrial use, but was marketed as a commercial parcel and reportedly the buyer plans to construct a retail type use. The property is located with good access and visibility to 99 and highway commercial/fast food developments.



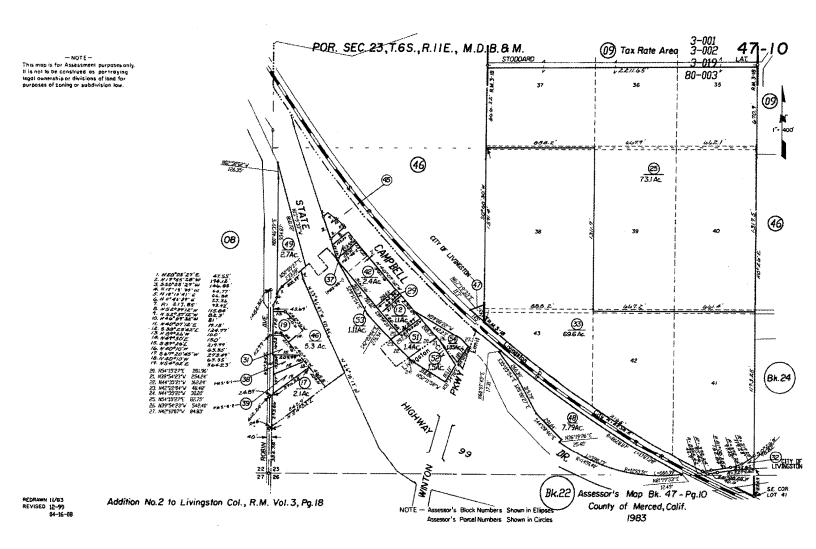
SATELLITE IMAGE – APPROXIMATE BORDERS



STREET VIEW - PROVIDED BY GOOGLE EARTH



Sale #4



Type: Commercial Lot Location/Address/City: 3603 M Street, Merced, CA County: Merced Assessor's Parcel #: 230-220-055 Seller: Aloes & Cedars, LLC. **Buyer:** Pacific Gas & Electric Topography: Generally Level **Highest and Best Use:** Commercial Development Record. Date: 6/03/2016 Doc #: 17834 Site Utility: Average Verification: MLS/Agent/Realist Price: \$710,000 **Price/SF:** \$6.27/SF **Conditions of Sale:** None Terms: Cash Site Area: 2.6 Acre/113,256 SF **Zoning/GP:** C-O Commercial Office Access/Visibility: Average/Good (Corner Parcel) Off-sites: Fronts public maintained road, curbs, gutters, sidewalks, street lights. **Utilities:** All utilities to the site

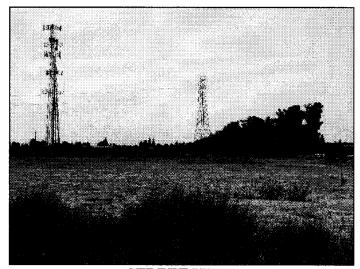
Improvements when sold: None

Present Use: Vacant Commercial Lot

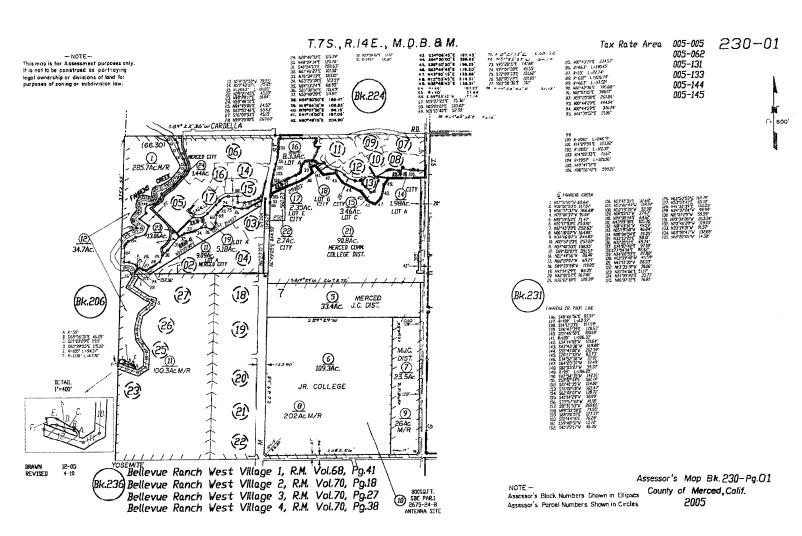
Comments: The details of this sale were confirmed by Paul Asai of Tinetti Realty Group (209) 384-3885. All utilities were at site at the time of sale. The property was previously developed to a church. The property was sold to a public utility that plans to put in a transfer station and split the lot for re-sale. According to the broker, this represented a market sale and the seller had additional offers if this sale fell through. The broker felt that the price was at the current market. The property has landscaping and parking from the previous church that had been removed.



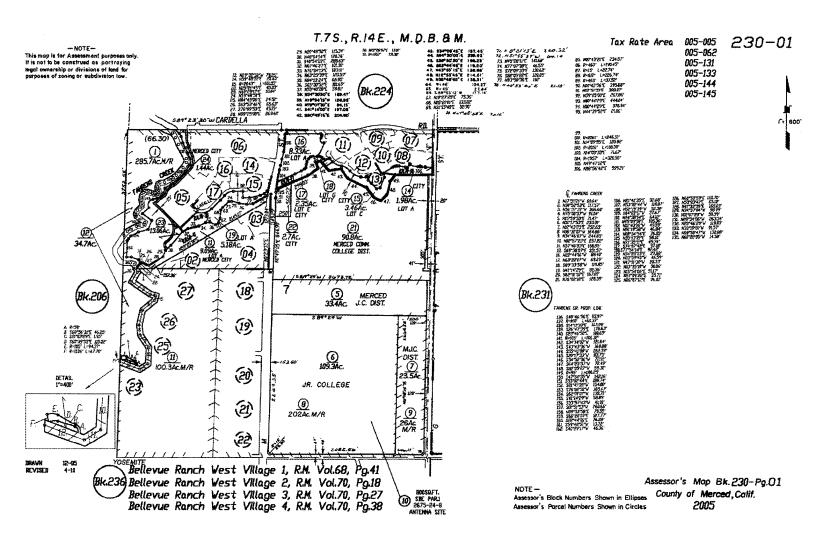
SATELLITE IMAGE – APPROXIMATE BORDERS



STREET VIEW



Sale #5



Type: Commercial Lot

Location/Address: Cardella and M St., Merced, CA

County: Merced

Assessor's Parcel #: 230-010-016

Seller: N/A – Public info does not match broker data (see Comments)

Buyer: Merced High Sch Quarterback Cl

Topography: Generally Level **Doc** #: 36133

Highest and Best Use: Commercial Development Record. Date: 10/21/16

Site Utility: Average Verification: MLS/Realist/Broker

Price: \$1,100,000 **Price/SF:** \$3.03/SF

Conditions of Sale: None

Terms: Cash

Site Area: 8.33 AC/362,855 SF

Zoning: P-D, Planned Development (City of Merced)

Access/Visibility: Average/Average

Off-sites: Fronts public maintained road, Curbs, Gutters and Sidewalks

Utilities: To Site

Improvements when sold: None

Present Use: Vacant

Comments: The details of this sale were confirmed by Janet Bamford at the listing agents' office Gonella Realty (209) 383-2171, the MetroList service and public records via Realist.com. The listing broker's office reported this as a market sale. Public records show the sale with Merced Qb Club LLC granting title to Merced High Sch Quarterback Cl, which appears to be a related entity. As such, this sale is used as secondary support only. The site has average functional utility, visibility, and access and represents a commercial lot ready for development. M street is a high traffic commercial corridor in the City of Merced. However, this lot is located past the high traffic area, in a newly developed residential neighborhood Surrounding development includes newly developed single-family residences. The site is oddly shaped, which is considered to impact its functional utility.

VALUE CONCLUSION: LAND

Comparable sales have been selected to reflect, as much as possible, attributes discussed above as they relate to the subject property. The comparable sales are similar to the subject in that they have potential for development to a commercial property.

Sale #1

No adjustments were required for Property Rights Conveyed, Financing Terms, Conditions of Sale, Expenditures After Purchase, or Market Conditions. Location was considered superior based on surrounding development in the neighborhood and adjusted downward 10%. Size was adjusted downward to reflect the typically higher price paid on a per unit basis for relatively smaller properties; a 15% adjustment for the size difference is considered reasonable. Visibility was considered superior and adjusted downward 5%. Access was considered superior and adjusted downward 5%. Site Improvements were considered inferior and adjusted upward 5%. All other adjustment factors were considered generally similar. The adjusted value is \$5.07/square foot.

Sale #2

No adjustments were required for Property Rights Conveyed, Financing Terms, Conditions of Sale, Expenditures After Purchase, or Market Conditions. Location was considered inferior based on surrounding industrial development and was adjusted upward 10%. The lot is flag shaped and Functional Utility is considered inferior, a 10% upward adjustment is made. Site Improvements were considered inferior and adjusted upward 5%. All other adjustment factors were considered generally similar. The adjusted value is \$4.67/square foot.

Sale #3

No adjustments were required for Property Rights Conveyed, Financing Terms, Conditions of Sale, Expenditures After Purchase, or Market Conditions. Location was considered superior based on surrounding highway commercial development in the neighborhood and adjusted downward 10%. Size was adjusted downward to reflect the typically higher price paid on a per unit basis for relatively smaller properties; a 15% adjustment for the size difference is considered reasonable. Off-Sites were lacking curbs, gutters, sidewalks; considered inferior and adjusted upward 5%. Visibility was considered superior and adjusted downward 5%. Site Improvements were considered inferior and adjusted upward 5%. All other adjustment factors were considered generally similar. The adjusted value is \$4.80/square foot.

Sale #4

No adjustments were required for Property Rights Conveyed, Financing Terms, Conditions of Sale, Expenditures After Purchase, or Market Conditions. Location was considered superior based on surrounding highway commercial development in the neighborhood and adjusted downward 10%. Size was adjusted downward to reflect the typically higher price paid on a per unit basis for relatively smaller properties; a 10% adjustment for the size difference is considered reasonable. Visibility was considered superior and adjusted downward 5%. All other adjustment factors were considered generally similar. The adjusted value is \$4.70/square foot.

LAND SALE ADJUSTMENT GRID						
1137 B Street, Merced, CA 95341	T 6 11 1 1	6.1.111	0.1.10	6.1.10		T 01.00
Physical Characteristics:	Subject	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5
Sales Price (Unadjusted)	N/A	\$505,000	\$700,000	\$392,000	\$710,000	\$1,100,000
Size (Acres)	5.06	1.60	4.30	1.50	2.60	8.33
Size (SF)	220,414	69,696	187,308	65,340	113,256	362,855
Price/Acre (Unadjusted)		\$315,625	\$162,791	\$261,333	\$273,077	\$132,053
Price/SF (Unadjusted)		\$7.25	\$3.74	\$6.00	\$6.27	\$3.03
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Adjustment						
Adjusted Value		\$7.25	\$3.74	\$6.00	\$6.27	\$3.03
Financing Terms	N/A	Cash	Cash	Cash	Cash	Cash
Adjustment					4.5.55	
Adjusted Value		\$7.25	\$3.74	\$6.00	\$6.27	\$3.03
Conditions of Sale	N/A	Market	Market	Market	Market	Market
Adjustment						
Adjusted Value		\$7.25	\$3.74	\$6.00	\$6.27	\$3.03
Expenditures Immediately After Purch.	N/A	None	None	None	None	None
Adjustment						
Adjusted Value		\$7.25	\$3.74	\$6.00	\$6.27	\$3.03
Market Conditions	8/17/2017	1/8/2016	3/25/2016	5/16/2016	6/3/2016	10/24/2016
Adjustment						
Adjusted Value		\$7.25	\$3.74	\$6.00	\$6.27	\$3.03
Prelim. Adjusted \$/SF		\$7.25	\$3.74	\$6.00	\$6.27	\$3.03
Physical Characteristics:						
Location	Average	Superior	Inferior	Superior	Superior	Superior
Adjustment	Average	- 10%	10%	- 10%	-10%	-5%
Topography Adjustment	Level	Similar	Similar	Similar	Similar	Similar
Size (Acres)	5.06	1.60	4.30	1.50	2.60	8.33
Adjustment		-15%		-15%	-10%	15%
Shape (Func. Utility) Adjustment	Average	Average	Below Average 10%	Average	Average	Below Average 10%
Zoning (Entitlements) Adjustment	PD/Office	Similar	Similar	Inferior 5%	Similar	Similar
Off-Sites/Utilities						
Curb/Gutter/Sidewalk	C/G/S Hypothetical	C/G/S	C/G/S	None	C/G/S	C/G/S
Electric	To site	To site	To site	To site	To site	To site
Public Water	To site	To site	To site	To site	To site	To site
Public Sewer	To site	To Site	To Site	To Site	To site	To site
Adjustment	10 310	10 Site	10316	5 %	10 site	10 site
Visibility Adjustment	Average	Superior -5%	Similar	Superior -5%	Superior -5%	Similar
Access Adjustment	Average	Superior -5%	Similar	Superior -5%	Similar	Similar
Site Improvements Adjustment	Landscaping Parking Lot	Inferior 5%	Inferior 5%	Inferior 5 %	Similar	Inferior 5%
Overall Adjustment		-30%	25%	-20%	-25%	25%
CACIAN MUJUMHERI						HQ 713

Sale #5

No adjustments were required for Property Rights Conveyed, Financing Terms, Conditions of Sale, Expenditures After Purchase, or Market Conditions. Location was considered superior based on surrounding newer development and was adjusted downward 10%. Size was adjusted upward to reflect the typically lower price paid on a per unit basis for relatively larger properties; a 10% adjustment for the size difference is considered reasonable. The lot is irregularly shaped and Functional Utility is considered inferior, a 10% upward adjustment is made. Site Improvements were considered inferior and adjusted upward 5%. All other adjustment factors were considered generally similar. The adjusted value is \$3.79/square foot.

Conclusion- Preliminary Land Value

Prior to adjustments, the price per square foot ranged from \$3.74 to \$7.25. After adjustments, the range is from \$3.79/square foot to \$5.07/square foot. Sale #2 and #5 are utilized as secondary support only (see sales data sheets). Sale #1, #3 and #4 are given primary emphasis and have a range of \$4.70 to \$5.07/square foot. Placing the most emphasis on Sale #1, #3 and #4 with secondary support from sale #2 and #5, the land value is concluded at \$4.75/SF.

4.75/SF x 220,414 square feet = 1,046,967, Round 1,050,000

BUILDING IMPROVEMENT DEPRECIATED REPLACEMENT COST

Replacement Cost Analysis

The <u>Marshall Valuation Service</u> is used to estimate the total improvement costs. The replacement cost new will be calculated by adding direct and indirect costs and an appropriate allowance for entrepreneurial profit. Any depreciation from physical, functional, or external sources will then be deducted from the estimated replacement cost new. Finally, the depreciated improvement value will be added to the land value to conclude a value estimate by the Cost Approach.

Marshall Valuation Service

The cost summary on the following pages identifies each of the separate improvements components and indicates the appropriate <u>Marshall Valuation Service</u> designation including the Section, Page, and description. Additionally, the appropriate adjustments including, perimeter, story height, and current and local multipliers are applied as necessary to derive an adjusted base cost for each of the subject's primary improvement components. After the appropriate base unit cost is derived the cost is extended based upon the component sizes. The total improvements replacement cost is thus established.

Costs included in the Direct Costs:

The following construction costs are included in this cost estimate:

- Cost of interim money during normal periods of construction, but not discount points.
- Site preparation including finish grading and excavation for foundation and back-fill.
- Utilities from structure to lot line figured or typical setback.
- Contractor's overhead and profit, including job supervision, workmen's compensation, fire
 and liability insurance, unemployment insurance, equipment, temporary facilities, security,
 etc.

Costs included in the Indirect Costs:

Certain costs are not included in the direct costs. These are generally indirect or soft costs. The additional costs that were excluded by the <u>Marshall Valuation Service</u> and added in our analysis are as follows:

- Insurance & Taxes Costs during Construction: Estimated at \$2,500.
- Professional Fees (including Title, Escrow, and Appraisal): Estimated at \$5,000.
- Loan Fees: Estimated at 2% of direct costs.
- Contingency / Miscellaneous Costs: Estimated at 2% of direct costs.

Developer's Profit / Entrepreneurial Incentive

Entrepreneurial incentive compensates the developer for project risk and management. It is unlikely that a developer would proceed with a development unless adequate profit is available to justify the effort. This cost component includes office overhead, staff, and profit. Entrepreneurial incentive generally ranges from 8% to 15% of the replacement cost and land value, depending upon project size, location, and marketability. An entrepreneurial profit of 10% is considered reasonable due to type of structure and size.

Depreciation

From the improvement (replacement) cost new, a dollar amount of depreciation may be deducted. There are three types of depreciation: physical, functional, and external. Physical depreciation is the result of physical wear and tear on the improvements. Functional obsolescence is the result of design or physical problems, which reduce the income-producing ability or desirability of the subject property. External obsolescence is the result of outside influences (economic and neighborhood) that decrease the value of the property.

Physical Depreciation:

Physical depreciation was estimated based upon the Age/Life Method. Improvements are depreciated based on estimates of Effective Age and Estimated Economic Life shown in the Improvement Analysis section. The estimated effective age is divided by the estimated economic life of the subject building to derive a percentage amount of depreciation. The economic life estimates were based on reference to Marshall Valuation Services.

Functional Depreciation:

Due to the atypical modular building construction the subject suffers from some Functional Obsolescence. The design of the building, large un-partitioned office area and low cost finishes appear dated and is atypical of a permanent office building in the area. A Functional Obsolescence of 20% is applied.

External Obsolescence:

The market for development land and office properties is described as flat with increasing demand by market participants. External Obsolescence is not considered warranted.

See depreciated replacement cost summary on following page:

Conclusion – Building Improvements

The Depreciated Replacement Cost of the subject's building improvements is estimated at \$31,000, see summary on following page.

Value Conclusion by the Cost Approach

The indicated value by the Cost Approach is

(See Extraordinary Assumptions)
ONE MILLION EIGHTY THOUSAND DOLLARS
\$1,080,000

DEPRECIATED REPLACEMENT COST - BUILDING IMPROVEMENTS ADDRESS: 1137 B Street, Merced, CA 95341

DIRECT COST OF IMPROVEMENTS							Marsha	all Valuation	i Service							
Bldg #1 - Modular Office, Sec. 64, Pg. 8, "ABase Cost, First Floor	Average" \$		28.25					Local	1.1	3 Cu	ırrent		Firs 1.03 \$	t Floor 32.88		
	Building #1 Total						*Exten	1,960 ided totals a		\$ 3	2.88 / s due to		\$ \$ ng.	64,445 64,445		
SITE IMPROVEMENTS & MISCELLA	ANEOUS STRU	CTURE	ES (Estim	ated Depreci	ated (ontribut	огу Va	lue):								
	Shed Building	(Sec 17,	Pg. 12)										\$	3,000		
	Landscaping & Included in La Total				п Арр	roach							\$	3,000		
FURNITURE, FIXTURES & EQUIPME	NT: - Not Inclu	ded in V	aluation													
TOTAL DIRECT COSTS:															\$	67,445
INDIRECT COSTS:	Architectural/F Insurance & Ta Title, Escrow, Loan Fees: Miscellaneous:	axes Dur and App	ing Const		cost es	2.0%	of dire						\$ \$ \$ \$	2,500 5,000 1,349 1,349		
TOTAL INDIRECT COSTS:															\$	10,198
TOTAL DIRECT AND INDIRECT COS	TS:														\$	77,643
	Developer's P	rofit:				10%	of dir	ect, indirect	, and land	costs.			\$	7,764		
ESTIMATED REPLACEMENT COST:							\$	85,407		(Rounded	i)				\$	85,000
DEPRECIATION:	Physical Depre	eciation														
Bldg.		Cost New		Allocated Indirect		llocated ev. Prof.	Total	Cost New	Effect. Age (Est.	Economic	Life	Depr	r. I	Depreciation		
Building #1	\$ \$	ıew	64,445 64,445	\$ 10,198	\$	7,764 7,764		82,407 82,407	17	30		57%	s \$	46,697.44 46,697		
	Physical Depre	eciation											\$	46,697		
	Physically Dep	reciated	Replacem	ent Cost New	,								\$	38,303		
	Functional Obs	solescen	ce									20%	\$	7,661		
	Physically and	Function	nally Depr	eciated Repla	cemen	t Cost Ne	w							30,642		
	Economic Obs	olescenc	e									0%	\$	-		
	Physically and	Function	nally and E	conomically	Depre	ciated Re	placeme	ent Cost Nev	w				\$	30,642		
TOTAL DEPRECIATION:										(Round	ed)		\$	54,358	\$	54,000
DEPRECIATED REPLACEMENT COS	Ţ														\$	31,000
LAND VALUE FROM SALES COMPAR	RISON														\$	1,050,000
VALUE INDICATION FROM COST AP	PROACH						(Exten	ided totals a	ire subjec	t to differen	ces du	e to rom	ading)		s	1,088,000

RECONCILIATION

Cost Approach \$1,080,000

Sales Comparison Approach NA

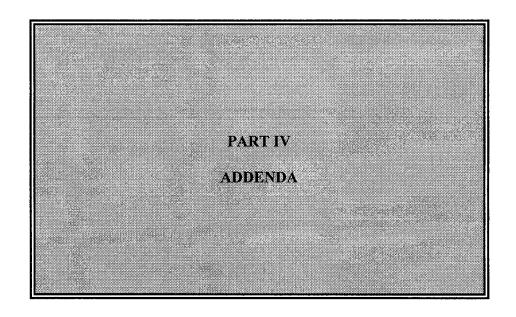
Income Approach NA

The Sales Comparison Approach and Income Approach were not applicable based on the characteristics of the building improvements.

The Cost Approach is considered to adequately support the value conclusion. Five closed sales were utilized. Sales data was considered adequate and the overall data adequately bracketed the subject's land value.

The opinion of the subject's Market Value, Fee Simple Estate, as of August 17, 2017 is:

ONE MILLION EIGHTY THOUSAND DOLLARS \$1,080,000



ENGAGEMENT CONTRACT



PURCHASE ORDER NO.							
P156874							
Printed 07/03/2017	Page	1					
REQUISITION NO	R0063915						

VENDOR:

MCBAY, KENNETH R DBA: KR MCBAY COMPANY PO BOX 1804 TURLOCK, CA 95381

BILL	TO:
------	-----

INQUIRIES TO	IKIES IO	:
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DEPARTMENT OF ADMINISTRATIVE SERVICES 2222 M STREET RM 1 MERCED, CA 95340 ATTN FRANK RYBKA

(209) 385-7331

SHIP TO:

PLEASE DELIVER THE FOLLOWING IN ACCORDANCE WITH THE TERMS AND CONDITIONS SPECIFIED ON THE ATTACHED DOCUMENTS.

BID/QU	OTE NO.		SHIP	P VIA	EFFECTIVE DATE	TERMS	F.O.B. POINT		DEL DATE	
		Y	YOUR	ROUTE		NET 30	DESTINATION	DESTINATION 08/29		
LINE	QTY	U	INIT		DESCRIPTION		UNIT PRICE	TAX	EXTENDED PRICE	
1	1.0	000	JB	MODULAR O 1137 B STRE MERCED, CA APN 035-010	A 95341 1-071 SAL DATE 7/1/2017 AND SUB!		\$2,900.00	\$0.00	\$2,900.00	
						TOTAL	\$2,900.00	\$0.00	\$2,900.00	

Authorized Company Officer (please print name)	- Il Count
Signature (in blue ink) Date	Mark Cowart Administrative Services Director

LEGAL DESCRIPTION/GRANT DEED

RECORDING REQUESTED BY:

When Recorded Mail Document and Tax Statement to:

County of Merced 715 Martin Luther King Jr. Way Merced, CA 95340

Recorded in Official Records, Merced County

KENT B. CHRISTENSEN

Merced County Recorder

12/22/2009 10:48 AM RE03

T

2

P Public

2009 - 061427



1	Pages:
	0.00
	0.00
	0.00
	\$0.00
	1

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 035-010-071

GRANT DEED

RAT 11922 The undersigned grantor(s) declare(s) the amount of transfer tax is \$0.00. FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged.

Calvary Chapel of Merced,

hereby GRANT(s) to the County of Merced, a body politic and corporate, the following described real property located in the City of Merced. State of California:

All that portion shown as Parcel A on that certain Parcel Map for "Raymond A. Bessemer, M.D." recorded March 2, 2000, in Book 86 of Parcel Maps, Pages 22 and 23, Merced County Records.

Dated: __ //-5-09

STATE OF CALIFORNIA

COUNTY OF

before me. , Notary Public, personally appeared

Gregory B. Boyd

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) sare subscribed to the within instrument and acknowledged to me that **Ge**/she/they executed the same in (his) her/their authorized capacity(ies), and that by her/their signature(s) on the instrument the person(e), 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

Calvary Chapel of Merced

D. HEIDEN COMM. #1803305 Notary Public-California CONTRA COSTA COUNTY My Comm. Exp. JULY 19, 2012

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED. STATE OF CALIFORNIA

In the Matter of	
ACCEPTING GRANT DEED FROM)
CALVARY CHAPEL OF MERCED FOR)
PROPERTY LOCATED AT 1137 "B") RESOLUTION NO. 2009-237
STREET IN MERCED CALIFORNIA (APN	·
035-010-071))

WHEREAS, it is deemed in the best interest of the County of Merced that the Grant Deed, dated November 5, 2009, conveying property interest to the County of Merced from Calvary Chapel of Merced for property located at 1137 "B" Street, Merced. California; and,

WHEREAS, the property included in the Grant Deed consists of a 5.06 acre parcel represented by APN 035-010-071; and.

WHEREAS, upon acceptance, the original Grant Deed will be placed in escrow with Fidelity National Title Company, Order No. 3005861; and,

WHEREAS, the original Grant Deed will be recorded by Fidelity National Title Company as part of the escrow process.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors for the County of Merced that the Grant Deed from Calvary Chapel of Merced executed on November 5, 2009 for property located at 1137 "B" Street in Merced be accepted by and on behalf of the County of Merced, State of California.

I, DEMITRIOS O. TATUM, Clerk of the Board of Supervisors of the County of Merced, do hereby certify that the foregoing resolution was regularly introduced, passed and adopted by said Board at a regular meeting thereof held on 8th day of December. 2009 by the following vote:

SUPERVISORS:

AYES:

Deidre F. Kelsey, John Pedrozo, Hub Walsh, Mike Nelson,

Jerry O'Banion

NOES:

None

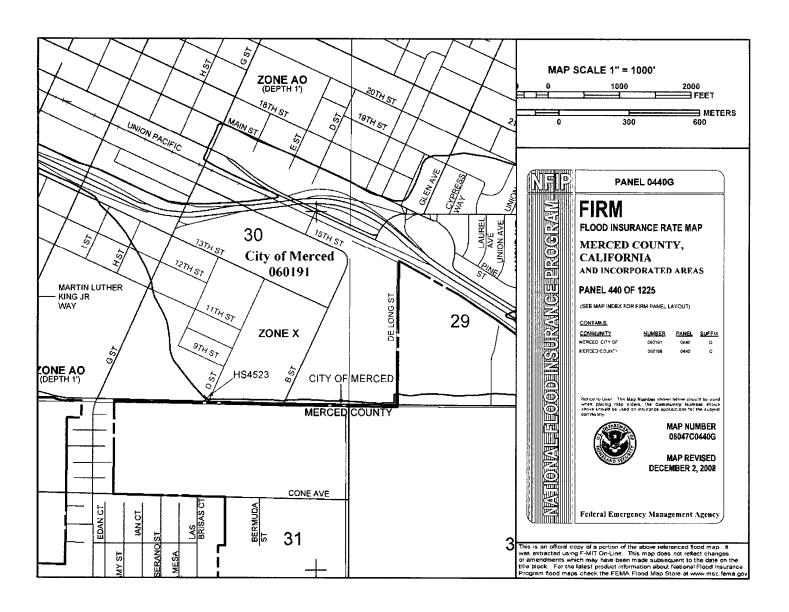
ABSENT: None

WITNESS my hand and the Seal of this Board this 8th day of December .

2009.

DEMITRIOS O. JATUM, CLERK

FEMA MAP



APPRAISER LICENSE



Business, Consumer Services & Housing Agency BUREAU OF REAL ESTATE APPRAISERS REAL ESTATE APPRAISER LICENSE

Ryan D. Heiny

has successfully met the requirements for a license as a residential and commercial real estate appraiser in the State of California and is, therefore, entitled to use the title:

"Certified General Real Estate Appraiser"

This license has been issued in accordance with the provisions of the Real Estate Appraisers' Licensing and Certification Law.

BREA APPRAISER IDENTIFICATION NUMBER:

AG 041138

Effective Date:

June 2, 2017

Date Expires:

June 1, 2019

Jim Martin, Bureau Chief, BREA

3033200

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD UP TO LIGHT TO SEE "CHAIN LINK



Business, Consumer Services & Housing Agency BUREAU OF REAL ESTATE APPRAISERS REAL ESTATE APPRAISER LICENSE

Kenneth R. McBay

has successfully met the requirements for a license as a residential and commercial real estate appraiser in the State of California and is, therefore, entitled to use the title:

"Certified General Real Estate Appraiser"

This license has been issued in accordance with the provisions of the Real Estate Appraisers' Licensing and Certification Law.

BREA APPRAISER IDENTIFICATION NUMBER:

AG 008218

Effective Date:

April 19, 2017

Date Expires:

April 18, 2019

Tim Martin Rureau Chief BREA

3034415

APPRAISER QUALIFICATIONS

K. R. McBay Company

Real Estate Valuation and Consultation Commercial, Agricultural, Eminent Domain

QUALIFICATIONS OF RYAN D. HEINY

PROFESSIONAL QUALIFICATIONS:

State of California Certified General Real Estate Appraiser, #AG041138 Candidate for Designation, Appraisal Institute

FORMAL EDUCATION:

California State University Stanislaus

B. A., Organizational Communications
Graduated "Magna Cum Laude"

EXPERIENCE:

2011 - Present:

K. R. McBay Co.; Senior Real Estate Appraiser: Appraisal of industrial, agricultural, multi-family residential, retail, office, development properties, eminent domain, right-of-way valuation. Experience included appraisal of owner-occupied and income-producing properties, in addition to appraisal review.

2006 - 2011

Robert Ford & Associates; Real Estate Appraiser: industrial, retail, agricultural, office, hotel/motel, mixed and special use and vacant land valuation. Experience included appraisal of owner-occupied and income-producing properties.

2005 - 2006

<u>World Savings/Atlas Securities</u>; Financial Analyst: Experience included stock and bond asset valuation, and risk exposure analysis.

2001 - 2005

Merrill Lynch Pierce Fenner & Smith; Financial Analyst: Experience included stock and bond asset valuation, and risk exposure analysis.

PROFESSIONAL APPRAISAL EDUCATION:

Advanced Income Capitalization

Quantitative Analysis

Advanced Concepts and Case Studies

Advanced Market Analysis and

Highest and Best Use

Business Practices and Ethics

Sales Comparison Approach

General Appraiser Income Approach I

General Appraiser Income Approach II Site Valuation and Cost Approach

Report Writing and Case Studies Commercial Appraisal Review

Expert Witness for Commercial Appraisers

Environmental Contamination of

Income Properties

Environmental Pollution and Mold

Analyzing Industrial Buildings for Mortgage

Underwriting

Foundations in Sustainability; Greening the Real Estate Industry

Minimizing Liability in Commercial Appraisal Real Estate Finance. Statistics and Valuation

Modeling

Market Analysis and Highest and Best Use

2016-2017 USPAP Update 2013-2014 USPAP Update

2010-2011 USPAP Update

2007-2008 USPAP Update

National USPAP Course

Basic Appraisal Principles
Basic Appraisal Procedures

Laws and Regulations for California Appraisers

K. R. McBay Co. P. O. Box 1804 Turlock, CA 95381-1804

(209) 634-0402 Office & Fax www.krmcbayco.com kennethmcbay@krmcbayco.com

K. R. McBay Company

Real Estate Valuation and Consultation Commercial, Agricultural, Eminent Domain

QUALIFICATIONS OF KENNETH R. MCBAY

PROFESSIONAL QUALIFICATIONS:

MAI (Member Appraisal Institute) - Designated Member of the Appraisal Institute AI-GRS (Appraisal Institute-General Review Specialist) - Designated Commercial Reviewer ARA (Accredited Rural Appraiser) - American Society of Farm Managers & Rural Appraisers SR/WA (Senior Right of Way Agent) - International Right-of-Way Association State of California Certified General Real Estate Appraiser, #AG008218 Licensed Real Estate Broker, State of California, #00777996 Conservation Easement Valuation (Appraisal Institute & ASFMRA) Litigation Appraisal (Appraisal Institute)

FORMAL EDUCATION:

Hancock College	A.S. Degree, Business (Real Estate)
California State Polytechnic University	B.S. Degree, Agronomy
California State Polytechnic University	M.S. Degree, Agricultural Management
University of South Illinois	One year completed toward MBA

EXPERIENCE:

2000 - Present:	K. R. McBay Co.: Agricultural, commercial, and eminent domain real estate valuation and consultation.
1995 - 2000:	<u>Professional Appraisal & Right-of-Way Services, Inc.</u> : Right-of-way services, retail, office, industrial, special use, agricultural, and multiresidential valuation.
1991 - 1994:	<u>Woollard Associates</u> : Retail, office, industrial, special use, subdivision, residential, and agricultural valuation.
1987 - 1989:	Bank of America Agricultural O.R.E.O.("Other Real Estate Owned"): Valuation and analysis of foreclosure properties. Administration of property management section.
1982 – 1987:	John Hancock Life Insurance Co. Real Estate Investment Department: Valuation and analysis of full range of agricultural properties, management of property portfolio, origination and underwriting of loan portfolio.
1979 – 1982:	<u>Cal Coast Irrigation</u> : Designed and sold full range of farm and ranch irrigation systems
1977 – 1979:	<u>Continental Factors Corporation:</u> Managed portfolio of absentee owner farms and ranches, provided feasibility analysis of various agricultural real estate acquisitions, and brokerage services.

EXHIBIT C

PURCHASE AGREEMENT TERMS

The Parties agree that a Purchase Agreement shall be executed within ninety (90) days of the LESSEE successfully exercising the Option. In substantially the same form, the Purchase Agreement shall include, but not be limited to, the following terms:

- A. The requirement that use of the Premises shall be limited to the construction and operation of the affordable housing development described in section 6, subsection (B), shall be included as a Deed Covenant in the Grant Deed used to convey LESSOR's interest in the premises.
- B. Any land use entitlement LESSEE grants to a third party regarding the Premises shall be conditioned on the use of the Premises conforming to the requirements of section 6, subsection (B), of this Agreement.
- C. The Parties agree to cooperatively explore additional funding to assist with the permanent supportive housing units for no less than a 15 year period that are required under section 6 of this Agreement. These options may include, for example, funds made available under the Building Homes and Jobs Act, otherwise known as SB 2.
- D. The Grant Deed used to convey LESSOR's interest in the Premises shall include a Deed Covenant that reserves for LESSOR a reversionary interest in the Premises. (COUNTY's Power of Termination). In the event LESSEE, an assignee or successor in interest, has failed to begin "physical construction" of the project identified in section 6, subsection (B) within two (2) years of the closing date, the Deed Covenant shall provide LESSOR with the unconditional right and power to terminate all of LESSEE's (and anyone claiming by or through LESSEE or any of LESSEE's successors or assigns) rights, title, estate, and interest in the Premises, to reenter and repossess the Premises, to revoke the Grant Deed, and enforce the Deed Covenant. For purposes of this Purchase Agreement only, "physical construction" shall mean the presence of forms or structures that are unfinished or finished. Should the LESSOR choose to exercise such right, the funds provided for payment of the Premises by the LESSEE, as outlined in section 6, subsection(A), of the Lease for Ground Agreement, will be refunded to the LESSEE by the LESSOR at the time the LESSOR reenters and repossesses the Premises.
- E. LESSOR shall have, at its sole option and expense, ninety (90) days from the closing date to relocate from the Premises the improvements then existing on the Premises. Should the LESSOR choose to exercise such right, it will credit from the purchase price as indicated in the Lease for Ground Agreement section 6,subsection (A), an amount of \$31,000. Should the LESSOR chooses not to exercise such right, the LESSEE shall have absolute discretion to dispose of the existing improvements and will not be required to maintain or restore the existing improvements to their original condition within the revisionary period.
- F. LESSEE agrees to an "As-Is" purchase. LESSEE shall take title to the Premises in its present physical condition and on an "as is" and "where is" basis, with all faults, defects and deficiencies, whether known or unknown, it being understood that LESSOR is not making any representations or warranties whatsoever to LESSEE as to the physical condition, including without limitation the structural soundness thereof, habitability, merchantability, or fitness of the Premises, or any portion thereof, for any particular use or purpose by LESSEE, whether or not such proposed use or purpose has been

communicated to LESSOR or is desired by LESSOR, nor is LESSOR making any representation or warranty whatsoever as to the presence, absence or proximity on. under, in, or near the Premises of any hazardous, toxic, carcinogenic or otherwise harmful substances, or seismic faults or flood hazards, nor is LESSOR making any representation or warranty whatsoever as to whether or not the Premises complies or does not comply with any laws, regulations, ordinances, related to the condition, uses or occupancy thereof. LESSOR shall not be liable for any loss, damage (including consequential damage) or diminution of value of any kind or nature caused to the Premises, directly or indirectly, whether or not such loss, damage (including consequential damage) or diminution of value was discovered before or after the closing date.

G. LESSEE agrees to indemnify and hold LESSOR harmless against any and all claims arising out of the existence of hazardous substances or hazardous wastes in the soil or groundwater.

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.8. Meeting Date: 9/3/2019

Report Prepared by: Michael Hren, Principal Planner, Development Services Department

SUBJECT: Adoption of Resolution Recognizing the Importance of the 2020 Census and Ensuring a Complete, Fair, and Accurate Count of all Californians

REPORT IN BRIEF

The City Council of the City of Merced is asked to recognize the importance of the 2020 U.S. Census and support helping to ensure a complete, fair, and accurate count of all Californians.

RECOMMENDATION

City Council - Adopt a motion adopting Resolution 2019-53, a Resolution of the City Council of the City of Merced, California, recognizing the importance of the 2020 Census and supporting the efforts to help ensure a complete, fair, and accurate count of all Californians.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, with modifications; or,
- 3. Deny; or,
- 4. Continue to a future City Council meeting (date and time to be specified in the motion).

AUTHORITY

City of Merced Charter, Section 200.

CITY COUNCIL PRIORITIES

Fiscal Year 2019/2020 Council Goals and Priorities, Item 5: Future Planning is greatly impacted by the Census.

DISCUSSION

The City received a memorandum (Attachment 1) from the Merced County Association of Governments (MCAG), asking for local support for the 2020 Census in the form of a resolution.

As a member of the County's Complete Count Committee, which is preparing for the national 2020 Census, MCAG was approached about disseminating information to local jurisdictions about the importance of the Census and ensuring that all residents are counted. There are efforts underway to outreach to "hard to reach" populations about the Census in many creative ways. In order to demonstrate the support of local leaders in Census work, it was suggested at a Complete Count Committee meeting that all local jurisdictions take action on resolutions to help publicize the

File #: 19-435 Meeting Date: 9/3/2019

importance of residents responding to the Census next year. Staff has also reached out to Patricia Vazquez Topete, the California Complete Count-Census 2020 Associate Regional Program Manager, who intends to attend the September 3, 2019, meeting to discuss the Census and the City of Merced's role in the local partnership moving forward. A resolution has been prepared for City Council consideration at Attachment 2.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

- 1. Memorandum from MCAG
- 2. Resolution 2019-53



PH: 209.723.3153 FAX: 209.723.0322 www.mcagov.org 369 W. 18th Street Merced, CA 95340

ITEM 14

MEMORANDUM

DATE:

July 3, 2019

TO:

Technical Review Board

FROM:

Mary-Michal Rawling, Public Affairs Manager

RE:

2020 Census - Local Resolutions

SUMMARY

Consider adopting local resolutions in support of the 2020 Census.

BACKGROUND

As a member of the County's Complete Count Committee, which is preparing for the national 2020 Census, MCAG was approached about disseminating information to local jurisdictions about the importance of the Census and ensuring that all residents are counted. There are efforts underway to outreach to "hard to reach" populations about the Census in many creative ways. In order to demonstrate the support of local leaders in Census work, it was suggested at a Complete Count Committee meeting that all local jurisdictions take action on resolutions to help publicize the importance of residents responding to the Census next year.

PAST ACTION TAKEN

None.

NEXT STEPS

Cities may choose to use the attached County resolution as a template to present to their City Councils for adoption. A copy of the County's resolution to opt-in to statewide Census efforts passed in January 2019 is also attached for your reference.

FISCAL IMPACT

None.

REQUESTED ACTION

For information only.

ATTACHMENTS

County Opt-In resolution from January 2019
County Resolution in support of census efforts from March 2019 (template)

ATTACHMENT 1

BEFORE THE BOARD OF SUPERVISORS COUNTY OF MERCED, STATE OF CALIFORNIA

In the Matter of

AUTHORIZATION TO SUBMIT AN OPT-IN LETTER TO THE STATE OF CALIFORNIA IN ORDER TO RECEIVE MERCED COUNTY'S ALLOCATION OF FUNDS FOR CENSUS 2020 OUTREACH ACTIVITIES))))	RESOLUTION NO
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------	---------------

WHEREAS, the U.S. Census Bureau is required by Article I, Section 2 of the U.S. Constitution to conduct an accurate count of the nation's population every ten years; and

WHEREAS, Census data is used to determine federal funding levels and congressional representation, both of which are critical to state and local governments; and,

WHEREAS, a significant amount of work is required in order to achieve full participation in the 2020 U.S. Gensus, especially in California which has one of the highest hard to count populations in the nation; and,

WHEREAS, recognizing these challenges, leaders in our state have made a significant commitment to Census 2020 outreach and communication efforts by investing \$90.3 million toward strategies and activities that will help ensure an accurate and successful count in California; and.

WHEREAS, the County of Merced is eligible to receive \$289,390 from the California Complete Count Census 2020 Office, based on population and the California Hard-to-Count Index created by the California Department of Finance, Demographic Research Unit and modeled on the U.S. Census Bureau's Hard-to-Count Score of past censuses; and

WHEREAS, the County of Merced, in partnership with the State of California, other local governments, businesses, and community organizations, is committed to ensuring every resident in the County is counted; and,

WHEREAS, the County of Merced, in accepting the allocation amount will be obligated to ensure timely and comprehensive reports as set forth in the terms of California Complete Count 2020 Office Outreach Agreement including: preparing a Strategic Plan; participating in a monthly inperson meeting or call with the assigned State Regional Program Manager; preparing quarterly written reports; preparing an Implementation Plan, and preparing a Final Report.

NOW, THEREFORE, BE IT RESOLVED that

- 1) The Merced County Board of Supervisors supports participation in the 2020 U.S. Census
- 2) The Merced County Board of Supervisors authorizes the Chairman to sign and submit the required Opt-In letter with the intent to move forward with an Outreach Agreement as set forth by the California Complete Count Census 2020 Office for the use of State funds to conduct outreach activities to promote participation in the 2020 U.S. Census.

by said Board at a regular meeting thereof held on the 29th day of January, 2019 by the following vote:

SUPERVISORS:

AYES:

NOES:

ABSENT:

WITNESS my hand and the Seal of this Board this ______ day of _____.

JAMES L. BROWN, Clerk

I, James L. Brown, Clerk of the Board of Supervisors of the County of Merced,

Deputy

do hereby certify that the foregoing resolution was regularly introduced, passed, and adopted

BEFORE THE BOARD OF SUPERVISORS COUNTY OF MERCED, STATE OF CALIFORNIA

In the Matter of)
RECOGNIZING THE IMPORTANCE OF THE 2020 CENSUS AND SUPPORTING THE EFFORTS TO HELP ENSURE A COMPLETE, FAIR, AND ACCURATE COUNT OF ALL CALIFORNIANS)) RESOLUTION NO.)
WHEREAS , the U.S. Census Bureau is required by Article to conduct an accurate count of the population every ten y	·
WHEREAS, the next enumeration will be April 1, 2020 and online responses; and	d will be the first to rely heavily on
WHEREAS, the primary and perpetual challenge facing th undercount of certain population groups; and	e U.S. Census Bureau is the
WHEREAS, that challenge is amplified in California, given of communities; and	the size of the state and the diversity
WHEREAS, California has a large percentage of individual hard to count; and	ls that are considered traditionally
WHEREAS, these diverse communities and demographic missed in the 2020 Census; and	populations are at risk of being
WHEREAS, California receives nearly \$77 billion in federa census data; and	il funding that relies, in part, on
WHEREAS, a complete and accurate count of California's	population is essential; and

WHEREAS, the decennial census is a massive undertaking that requires cross-sector collaboration and partnership in order to achieve a complete and accurate count; and

WHEREAS, this includes coordination between tribal, city, county, state governments, community-based organizations, education, and many more; and

WHEREAS, U.S. Census Bureau is facing several challenges with Census 2020, including constrained fiscal environment, rapidly changing use of technology, declining response rates, increasingly diverse and mobile population, thus support from partners and stakeholders is critical; and

WHEREAS, California is kicking-off its outreach and engagement efforts in April 2019 for the 2020 Census; and

WHEREAS, the County of Merced in partnership with other local governments, the State, businesses, schools, and community organizations, is committed to robust outreach and communication strategies, focusing on reaching the hardest-to-count individuals;

NOW, THEREFORE, BE IT RESOLVED, that the Merced County Board of Supervisors recognizes the importance of the 2020 U.S. Census and supports helping to ensure a complete, fair, and accurate count of all Californians.

I, JAMES L. BROWN, Clerk of the Board of Supervisors of the County of Merced, do hereby certify that the foregoing Resolution was regularly introduced, passed, and adopted by said Board at a regular meeting thereof held on this day of March 26, 2019, by the following vote:

SUPERVISORS

Α	Y	5	

NOES:

ABSENT:

WITNESS my hand and the Seal of this	Board this	day of	, 2019
	JAMES	L. BROWN, Clerk	:
Deputy	Ву		

RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, RECOGNIZING THE IMPORTANCE OF THE 2020 CENSUS AND SUPPORTING THE EFFORTS TO HELP ENSURE A COMPLETE, FAIR, AND ACCURATE COUNT OF ALL CALIFORNIANS

WHEREAS, the U.S. Census Bureau is required by Article I, Section 2 of the U.S. Constitution to conduct an accurate count of the population every ten years;

WHEREAS, the next enumeration will be April 1, 2020 and will be the first to rely heavily on online responses;

WHEREAS, the primary and perpetual challenge facing the U.S. Census Bureau is the undercount of certain population groups;

WHEREAS, that challenge is amplified in California, given the size of the state and the diversity of communities;

WHEREAS, California has a large percentage of individuals that are considered traditionally hard to count;

WHEREAS, these diverse communities and demographic populations are at risk of being missed in the 2020 Census;

WHEREAS, California receives nearly \$77 billion in federal funding that relies, in part, on census data;

WHEREAS, a complete and accurate count of California's population is essential;

WHEREAS, the decennial census is a massive undertaking that requires cross-sector collaboration and partnership in order to achieve a complete and accurate count;

ATTACHMENT 2

WHEREAS, this includes coordination between tribal, city, county, and state governments, as well as community-based organizers, education professionals, and many more partners;

WHEREAS, the U.S. Census Bureau is facing several challenges with Census 2020, including but not limited to a constrained fiscal environment, rapidly changing use of technology, declining response rates, and increasingly diverse and mobile population, and thus support from partners and stakeholders is critical;

WHEREAS, California kicked off its outreach and engagement efforts in April 2019 for the 2020 Census; and,

WHEREAS, the City of Merced in partnership with other local governments, the State, businesses, schools, and community organizations, is committed to robust outreach and communication strategies, focusing on reaching the hardest-to-count individuals.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Merced recognizes the importance of the 2020 U.S. Census and supports helping to ensure a complete, fair, and accurate count of all Californians.

PASSED AND ADOPT	ΓED by the City	Council of the City of Merced at a
regular meeting held on the	day of	2019, by the following
vote:		= 313, 35 the following

AYES:

Council Members:

NOES:

Council Members:

ABSENT:

Council Members:

ABSTAIN:

Council Members:

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.9. Meeting Date: 9/3/2019

Report Prepared by: Francisco Mendoza-Gonzalez, Associate Planner, Development Services

SUBJECT: Adoption of Resolution Declaring the Intent to Abandon a Sewer Easement and Working Easement at 3600 G Street, Generally Located on the Northeast Corner of G Street and Yosemite Avenue, and Setting a Public Hearing for October 7, 2019 (Vacation #19-04)

REPORT IN BRIEF

Considers the abandonment of an old sewer easement and working easement at 3600 G Street.

RECOMMENDATION

City Council - Adopt a motion adopting Resolution 2019-55, a Resolution of the City Council of the City of Merced, California, declaring its intention to vacate a sewer easement and working easement at 3600 G Street, generally located on the northeast corner of G Street and Yosemite Avenue (Vacation #19-04) and setting time and place for Public Hearing.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to modifications as conditioned by Council; or,
- 3. Deny based on specific findings; or,
- 4. Refer back to staff for reconsideration of specific items as requested by Council; or,
- 5. Continue to a future meeting (date and time to be specified in Council motion).

AUTHORITY

Part 3, Chapter 3 of the Streets and Highways Code of the State of California authorizes the City Council to vacate a right-of-way or easement. The vacation shall be made by adoption of a resolution pursuant to Section 8335 of the Code, and shall be recorded pursuant to Section 8336. The City of Merced Administrative Policies and Procedures No. A-6 provides direction to staff for processing vacation requests, and City Resolution 86080 establishes a policy concerning costs associated with the vacation.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

Request

The subject site is a vacant 19.7-acre parcel zoned Planned Development (P-D) #72 with General

File #: 19-478 Meeting Date: 9/3/2019

Plan designations of Commercial Professional Office (CO) and High-Medium Density Residential (HMD). The applicant is requesting the vacation of an old Sewer Easement and Working Easement as described in Attachment 2 and shown at Attachment 3, located at the Northeast corner of Yosemite Avenue and G Street (Attachment 1). These easements were dedicated to the City by deed during the late 1980's for sewer purposes. The City's Engineering Department reviewed this proposal and looked through several records, and could not determine the original purpose for these easements or find a specific project that they were reserved for, and thus determined that these easements would not be needed for any future City-related projects. The City's Engineering Department recommends vacating these easements to give the property owner full rights to develop their land. If the City needs additional easements on this property, they can be requested when the property owner submits land use applications to develop this site.

After contacting all utility companies in the area, it was determined that no utilities were located within these easements, and there are no plans to use these easements in the future. Therefore, these easements are no longer needed and should be abandoned to give the property owners full use of their property. The General Plan does not address the abandonment of easements; and thus, this action does not conflict with any General Plan policies, text, or maps, so it can be considered "consistent."

History and Past Actions

At the Planning Commission meeting of July 17, 2019, the Planning Commission reviewed the vacation for consistency with the City's General Plan and found, by unanimous vote of those present, that the proposed vacation does not conflict with any General Plan policies, text, or maps, and is, therefore, consistent with the General Plan.

Recommendation

Staff is recommending the adoption of the Resolution at Attachment 4 to set a public hearing for October 7, 2019, to vacate the storm drainage easement and street light easement as described above.

IMPACT ON CITY RESOURCES

The approval of the requested vacation would not result in any impacts on City resources.

ATTACHMENTS

- 1. Location Map
- 2. Legal Description
- 3. Parcel Map
- 4. Draft City Council Resolution 2019-55



Exhibit A

Order No. Escrow No. Loan No.

WHEN RECORDED MAIL TO:

CITY OF MERCED. P.O. BOX 2068 MERCED, CA 95344-0068 PSP-L RECORDE OF MERCED COLUMN CALPORNIA LENOY G, GILSDORF

SPACE ABOVE RETHIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

EASEMENT DEED

For a Valuable consideration, receipt of which is hereby acknowledged, Spalding G. Wathen and Della Wathen,

hereby grants to the City of Merced, a Municipal Corporation, an easement for sewer purposes, over and across the southwest portion of Lot 57, according to that certain map entitled "TOWNE SUB-DIVISION," YOSEMITE COLONY," filed for record October 13, 1891 in Book 1 of Official Plats at Page 22, now appearing in Volume 2 of Official Plats at Page 22, Merced County Records, and being in the southwest quarter of Section 8, T. 7 S. R. 14 E., M.D.B. & M., Merced County California, being more particularly described as follows:

The south 15.00 feet of the west 50.00 feet of said Lot 57, the south line of said 15.00 foot strip of land being the north line of Yosemite Avenue.

Also a working easement over the south \$5.00 feet of the west 70.00 feet of said Lot 57, the south line of said 70.00 foot strip of land being the north line of Yosemite Avenue.

Subject to rights of way of record, if any.

Said working easement shall terminate upon filing of a Notice of Completion.

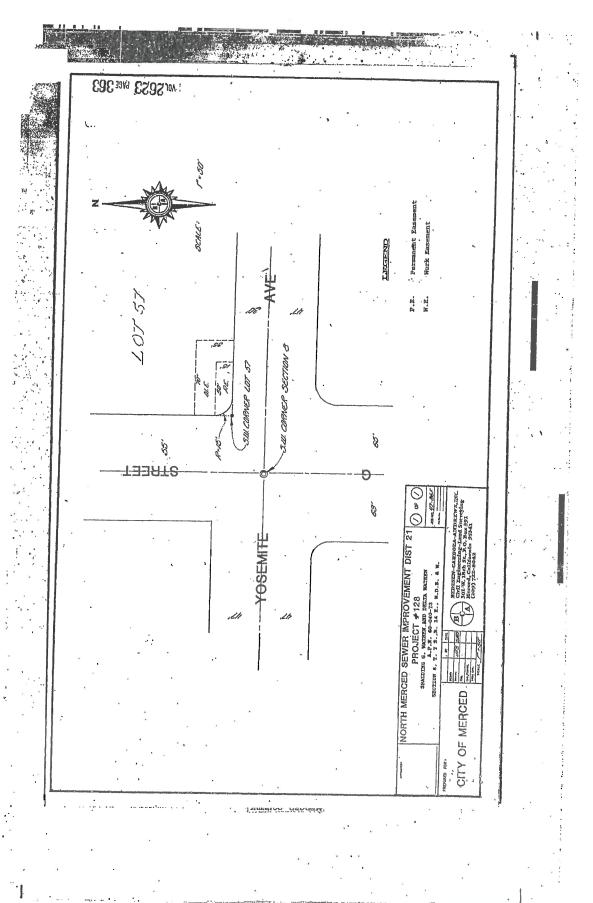
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RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, DECLARING ITS INTENTION TO VACATE A SEWER EASEMENT AND WORKING EASEMENT AT 3600 G STREET, GENERALLY LOCATED ON THE NORTHEAST CORNER OF G STREET AND YOSEMITE AVENUE (VACATION #19-04) AND SETTING TIME AND PLACE FOR PUBLIC HEARING

WHEREAS, the City Engineer of the City of Merced has recommended that the hereinafter described portions of easements are unnecessary for prospective public purposes; and

WHEREAS, the City Engineer has filed maps or plans with the City Clerk of the City of Merced showing the portions of the easements to be vacated at a specific time that will be determined.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Merced declares its intention to proceed under the provisions of Part 3 of the Streets and Highways Code of the State of California, being the Public Streets, Highways, and Service Easements Vacation Law, Chapter 3, to vacate a sewer easement and working easement at 3600 G Street, generally located on the northeast corner of G Street and Yosemite Avenue (Vacation #19-04), as described in Exhibit "A" and shown on the map at Exhibits "B" attached hereto and incorporated herein by this reference.

SECTION 2. Reference is made to the maps and plans which are filed in the office of the City Clerk of the City of Merced for further particulars as to the proposed vacation and reservation.

SECTION 3. October 7, 2019, at the hour of 6:00 p.m. of said day in the Council Chamber of the City Council, 678 West 18th Street, Merced, California, is fixed as the time and place for hearing all persons interested in or objecting to the proposed vacation. Said hearing may be postponed or continued.

SECTION 4. The City Engineer is directed to post or cause to be posted at least two weeks before the date set for hearing not less than two (2) notices of vacation of easements, not more than three hundred (300) feet apart, conspicuously along the lines of said portion of the public street proposed to be vacated, stating adoption of this resolution and the time and place of the hearing herein called. Posting a copy of this resolution shall constitute the posting of the required notice.

SECTION 5. The City Clerk is directed to cause a copy of this Resolution to be published once each week for two successive weeks prior to the public hearing in the official newspaper.

PASSED AND regular meeting held o vote:	ADOPTED by the City (on the day of	Council of the City of Merced at a 2019, by the following
AYES:	Council Members:	
NOES:	Council Members:	
ABSENT:	Council Members:	
ABSTAIN:	Council Members:	
		APPROVED:
		Mayou
		Mayor

ATTEST: STEVE CARRIGAN	, CITY CLERK
BY:	tr. Cita. Cl 1
Assistant/Depur	ly City Clerk
(SEAL)	
APPROVED AS TO I	FORM:
M	8/1/19
City Attorney	Date

Exhibit A

Order No. Escrow No. Loan No..

WHEN RECORDED MAIL TO:

CITY OF MERCED-P.O. BOX 2068 MERCED, CA 95344-0068 29.1987 AF 10:4000 OFFL RECORDE OF MERCED COUNTY CAMPONIA LENGY G, GILSDORF DATE OF THE PROPERTY OF THE PROPER

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

EASEMENT DÈED

For a Valuable consideration, receipt of which is hereby acknowledged, Spalding G. Mathen and Della Mathen,

hereby grants to the City of Mercad, a Municipal Corporation, an easement for sewer purposes, over and across the southwest portion of Ldt 87,

according to that certain map entitled "TOWNE SUB-DIVISION," YOSEMITE COLONY," filed for record October 13, 1891 in Book 1 of Official Plats at Page 22, now appearing in Volume 2 of Official Plats at Page 22, Merced County Records, and being in the southwest quarter of Section 8, T. 7 S. R. 14 E., M.D.B. & M., Merced County California, being more particularly described as follows:

The south 15.00 feet of the west 50.00 feet of said Lot 57, the south line of said 15.00 foot strip of land being the north line of Yosemite Avenue.

Also a working easement over the south \$5.00 feet of the west 70.00 feet of said Lot 57, the south line of said 70.00 foot strip of land being the north line of Yosemite Avenue.

Subject to rights of way of record, if any.

Said working easement shall terminate upon filing of a Notice of Completion.

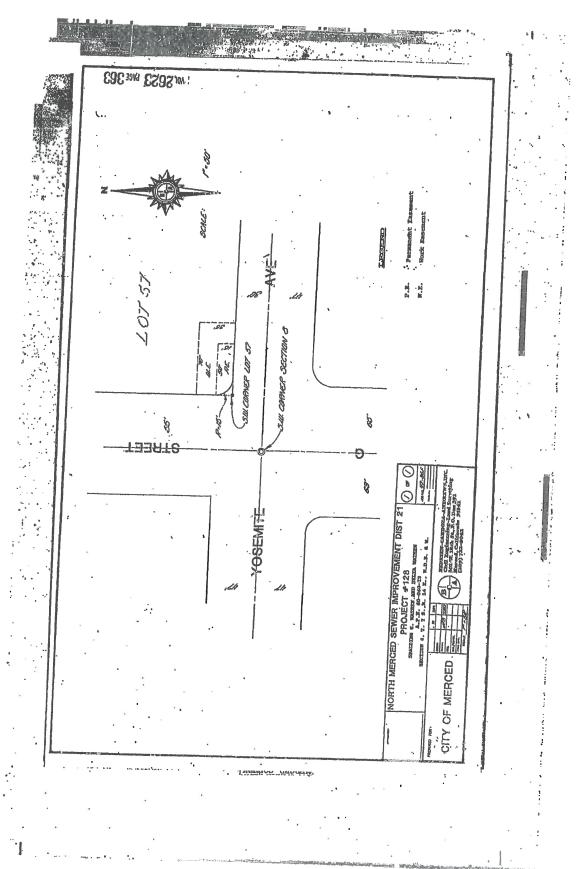
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LAWRENCE LAW

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CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.10. Meeting Date: 9/3/2019

Report Prepared by: Julie Nelson, Associate Planner, Development Services Department

SUBJECT: Adoption of Resolution Approving the Cypress Terrace 6, Phase A - Final Map 5366 for 18 Single-Family Lots, Generally Located on the West Side of N Street, North of Gerard Avenue, and the Approval of the Subdivision Agreement for Cypress Terrace 6, Phase A

REPORT IN BRIEF

Considers the approval of Final Map #5366 for 18 single-family lots, generally located on the west side of N Street (extended), north of Gerard Avenue (extended), and the Subdivision Agreement for Cypress Terrace 6, Phase A.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving **Resolution 2019-57**, a Resolution of the City Council of the City of Merced, California, approving the final subdivision map for the Cypress Terrace 6, Phase A Subdivision (#5366); and,
- B. Approving the subdivision agreement for Cypress Terrace 6, Phase A; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the subdivision agreement.

ALTERNATIVES

- 1. Approve the request as recommended by staff; or,
- 2. Deny the request; or,
- 3. Approve, subject to modifications as conditioned by Council; or
- 4. Refer back to staff for reconsideration of specific items (specific items to be addressed in City Council motion): or.
- 5. Continue to a future City Council meeting (date and time to be specified in City Council motion).

AUTHORITY

Chapter 24 of Title 18, Subdivisions, of the Merced Municipal Code (MMC) deals with final maps. Section 18.24.120 gives the City Council authority to approve the final map and agreements as long as it is consistent with the Tentative Map.

DISCUSSION

The proposed subdivision (Cypress Terrace 6, Phase A), is generally located on the west side of N

File #: 19-509 Meeting Date: 9/3/2019

Street (extended), between Childs Avenue and Gerard Avenue (extended) (Attachment 1). The Cypress Terrace 6, Phase A, Final Map #5366 would approve 18 lots on a single cul-de-sac (refer to the Final Map at Attachment 2). The Cypress Terrace 6 subdivision includes a total of 90 lots on 5 cul-de-sacs extending off of N Street (extended). A copy of the approved Vesting Tentative Subdivision Map for Cypress Terrace 6 and 7 is provided at Attachment 3. The lots within Cypress Terrace 6 would range in size from approximately 5,100 square feet to approximately 7,300 square feet.

The owner/developer, Stonefield Home, Inc., has substantially complied with the previously approved tentative map for this site (Tentative Map #1288), and has complied with the Conditions of Approval listed in Planning Commission Resolution #2876 (Attachment 3), adopted by the Planning Commission on April 19, 2006. The owner/developer has submitted an application for a final map approval in compliance with the Subdivision Map Act and City Subdivision Ordinance. It is now appropriate to approve the Final Map (Attachment 2) and Subdivision Agreement (Attachment 4).

The subdivision was annexed into the Community Facilities District (CFD) for Services (CFD No. 2003-2) as part of Annexation No. 2 in 2005.

City Council Action

The proposed Final Subdivision Map substantially complies with the approved Tentative Map for this site (TSM #1288). Therefore, the City Council should adopt the Resolution found at Attachment 5 approving Final Map #5366 for Cypress Terrace 6, Phase A and approve the Subdivision Agreement (Attachment 4) for the subdivision.

ATTACHMENTS

- 1. Location Map
- 2. Final Subdivision Map #5366
- 3. Planning Commission Resolution #2876
- 4. Subdivision Agreement
- 5. Draft City Council Resolution approving Final Map #5366



OWNER'S STATEMENT The undersigned being all parties having any record title interest in the land within the subdivision as shown on the map hereby consent to the preparation and recordation of this map and hereby irrevocably ofter for dedication for public use all Streets, Avenues, and Courts, all easements and dedications indicated on this map and hereby consent to the preparation and recordation of this map. For. Stonefield Home, Inc., a California Corporation	TITLE REPORT PRELIMINARY TITLE REPORT Prepared by: Fidelity National Title Company Document: FOUN-3011901131-DN Date: July 08, 2019 Affect: Used in preparation of this plat and considered a part hereto by reference	SURVEYOR'S STATEMENT. This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of Greg Hostelter on December 13, 2018, I hereby state that this Final Map substantially conforms to the approved or conditionally approved tentative map, If any, and that all manuments shown hereon are of the character and occupy the positions indicated or that they will be set in those positions before October 26, 2019 are or will be sufficient to enable the survey to be retraced.
By: Signature Date:	OMITTED SIGNATURES PURSUANT TO SECTION 66436(a)(3)(A)(i) OF THE SUBDIVISION MAP ACT, THE SIGNATURES OF THE FOLLOWING PARTIES HAVE BEEN OMITTED 1) NONE OF RECORD	Duane J. Andrews, L.S. 4052 Dated:
By: Signature Name & Title	SOILS REPORT. A sails report covering the land within the boundaries of the subdivision was made by Technicon Engineering Services Inc., 4539 N. Brawley \$108, Fresno, CA 93722, bearing the date of June 27, 2018, a copy of which is on file with the City of Merced. Project No. 1800436.001	CITY ENGINEER'S STATEMENT I hereby state that I have examined this final map and that the subdivision shown hereon is substantially the same as it appeared on the tentative map and any approved alterations thereof, that all the provisions of the California Subdivision Map Act and local ordinance applicable at the time of approval of the tentative map have been complied with.
Fidelity National Title Insurance Company, as Trustee under a Deed of Trust. By: Diane H. Robinson, Asst. Vice President		Signature: Michael R. Beltran II, R.C.E.83916 City Engineer
	RECORDER'S STATEMENT No	Date:
CITY CLERK'S STATEMENT I. Steven S Carrigan. City Clerk of the City of Merced, do hereby certify that this map was exproved at a Regular meeting of the City Council of the City of Merced, State of California on this day of that the Council did accept on behalf of the Public, all Streets, Avenues, and Courts, (Subject to Subdivision Improvements being accepted by the City of Merced), all easements and dedications indicated on this map and accept all underlying water rights.	Barbara J. Levey, County Recorder By:, Deputy SUBDIVISION AGREEMENT	Signature: Joe M. Cardoso, P.L.S. 8651 Date:
IN WITNESS WHEREOF, I hereto set my hand this day of 2019. Signature: Steven S. Carrigan, City Clerk	Subdivision Agreement between the City of Merced and STONEFIELD HOME, INC. for <u>CYPRESS TERRACE #6 PHASE A</u> recorded as Document Number , M.C.R.	SUBDIVISION MAP No. 5366
GOLDEN VALLEY ENGINEERING & SURVEYING		CYPRESS TERRACE #6 PHASE A BEING A SUBDIVISION OF A ADJUSTED PARCEL I AS DESCRIBED IN CERTIFICATE OF COMPLIANCE NO. 2019-01 RECORDED AS DOCUMENT IN 2019-020027, MERCED COUNTY RECORDS. SECTION 36, TOWNSHIP 7 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE & MERDIAN IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA. SHEET 1 OF 4 DECEMBER 2018
405 W. 19th Street P.O. Box 349 Merced, CA 95340 Phone (209) 722-3200 Fax (209) 722-3254		NOT THE SECRETARY OF SECRETARY

Job No. 18120 F.B. 128 Pg. 1-9

VOLUME _____

PAGE _____

(DO NOT STAMP)

ACKNOWLEDGEMENT

ACKNO WLEDGEMENT

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

2019, before me,
a Notary Public personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/sho/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 PERIURY under the laws of the State of California that the foregoing paragraph is true and correct

ommission	No.	

Commission Expires

(DO NOT STAMP)

ACKNO WLEDGEMENT

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, 2019, before me, a Notary Public personally appeared		
signature(s)	ir authorized capacity(ies), and that by his/her/their on the instrument the person(s), or the entity upon behalf e person(s) acted, executed the instrument.	
I certify un of California	der PENALTY OF PERJURY under the laws of the State a that the foregoing paragraph is true and correct	
Signature _		
Commission	No	
Commission	Expires	

(DO NOT STAMP)

SUBDIVISION MAP No. 5366 CYPRESS TERRACE #6 PHASE A

BEING A SUBDIVISION OF A ADJUSTED PARCEL 1 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE No. 2019-01 RECORDED AS DOCUMENT No. 2019-020027, MERCED COUNTY RECORDS. SECTION 36, TOWNSHIP 7 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE & MERIDIAN IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA.

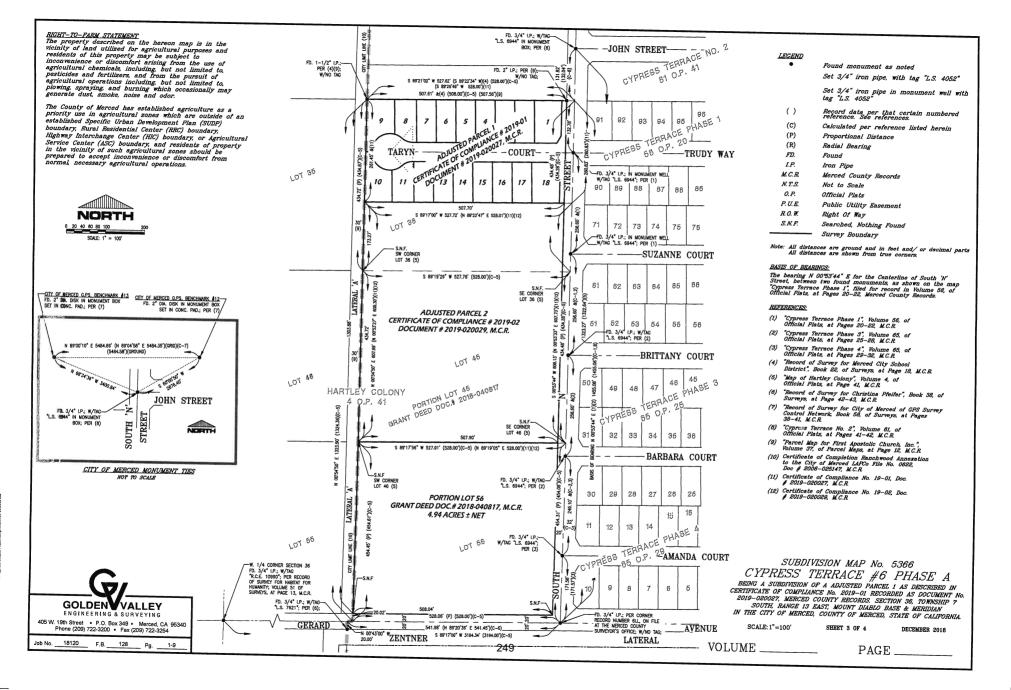
SHEET 2 OF 4

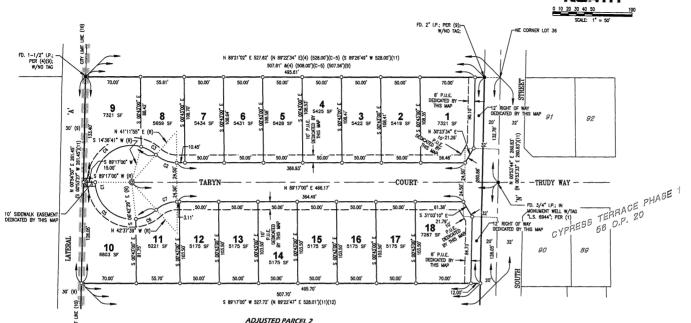
DECEMBER 2018

VOLUME _____

PAGE	
IAGE	

Commission Expires ____





CERTIFICATE OF COMPLIANCE # 2019-02

DOCUMENT # 2019-020029, M.C.R.

SEE SHEET 3

CURVE TA	BLE	
DELTA	RADIUS	LENGTH
263'49'34"	46.50'	214.12
041'54'55"	39.50'	28.90
026"35"14"	46.50'	21.58
105'19'41"	46.50	85.48'
095'59'29"	46.50'	77.90
035'55'10"	46.50'	29.15
041'54'39"	39.50'	28.89
	DELTA 263'49'34" 041'54'55" 026'35'14" 105'19'41" 095'59'29" 035'55'10"	DELTA RADIUS 263'49'34" 46.50' 041'54'55" 39.50' 026'35'14" 46.50' 105'19'41" 46.50' 095'59'29" 46.50' 035'55'10" 46.50'

GOLDEN VALLEY ENGINEERING & SURVEYING 405 W. 19th Street • P.O. Box 349 • Merced, CA 95340 Phone (209) 722-3200 • Fax (209) 722-3254

Job No. <u>18120</u> F.B. <u>128</u> Pg. <u>1-9</u>

SCALE: 1"=50' SHEET 4 OF 4 DECEMBER 2018 VOLUME _____ PAGE ____

	300000000000000000000000000000000000000	
	•	Found monument as noted
	0	Set 3/4" iron pipe, with tag "LS. 4052"
	0	Set 3/4" iron pipe in monument well with tag "L.S. 4052"
	()	Record data per that certain numbered reference. See references.
	(C)	Calculated per reference listed herein
	(P)	Proportional Distance
	(R)	Radial Bearing
	FD.	Found
	I.P.	Iron Pipe
	M.C.R.	Merced County Records
	N. T. S.	Not to Scale
	0.P.	Official Plats
	P. U.E.	Public Utility Easement
	R.O. W.	Right Of Way
	S.N.F.	Searched, Nothing Found
		Survey Boundary
		•
PHASE 1		
O .	Note: All distances are ground and in feet and/or decimal parts All distances are shown from true corners.	
	BASIS OF BEARINGS: The bearing N 00'53'44" E for the Centerline of South W Street, between two found monuments, as shown on the map "Cypress Terrace Phase 1", filed for record in Volume 56, of Official Plats, at Pages 20-22, Merced County Records.	
	REFERENCES:	

LEGEND

REFERENCES:

- "Cypress Terrace Phase 1", Volume 56, of Official Plats, at Pages 20-22, M.C.R.
- "Cypress Terrace Phase 3", Volume 65, of Official Plats, at Pages 25-28, M.C.R.
- "Cypress Terrace Phase 4", Volume 65, of Official Plats, at Pages 29-32, M.C.R.
- (4) "Record of Survey for Merced City School
- District", Book 22, of Surveys, at Page 18, M.C.R.
- (5) "Map of Hartley Colony", Volume 4, of Official Plats, at Page 41, M.C.R.
- (6) "Record of Survey for Christina Pfeifer", Book 36, of Surveys, at Page 42-43, M.C.R.
- (7) "Record of Survey for City of Merced of GPS Survey Control Network, Book 58, of Surveys, at Pages 38-41, M.C.R.
- (6) "Cypress Terrace No. 2", Volume 61, of Official Plats, at Pages 41-42, M.C.R.
- (9) "Parcel Map for First Apostolic Church, Inc.", Volume 37, of Parcel Maps, at Page 12, M.C.R.
- (10) Certificate of Completion Ranchwood Annexation to the City of Merced LAFCo File No. 0622, Doc # 2006-025147, M.C.R.
- (11) Certificate of Compliance No. 19-01, Doc. # 2019-020027, M.C.R.
- (12) Certificate of Compliance No. 19-02, Doc. # 2019-020029, M.C.R

SUBDIVISION MAP No. 5366 CYPRESS TERRACE #6 PHASE A

BEING A SUBDIVISION OF A ADJUSTED PARCEL 1 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE No. 2019-01 RECORDED AS DOCUMENT No. 2019-020027, MERCED COUNTY RECORDS. SECTION 36, TOWNSHIP 7 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE & MERIDIAN IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA.

CITY OF MERCED Planning Commission

Resolution #2876

WHEREAS, the Merced City Planning Commission at its regular meeting of April 19, 2006, held a public hearing and considered Vesting Tentative Subdivision Map #1288 ("Cypress Terrace 6, 7a, & 7b"), initiated by Golden Valley Engineering, applicants for Ranchwood Homes, property owner, to allow the subdivision of 46.2 acres located on both sides of Gerard Avenue, west of 'M' Street (currently being annexed into the City) into approximately 260 single family residential lots within an R-1-5 (Low-Density Residential 5,000 square-foot lot minimum) pre-zone; also known as Assessor's Parcel Numbers 059-290-014 and -038; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through N of Staff Report #06-29; and,

WHEREAS, the Merced City Planning Commission does resolve to hereby find that the previous environmental review [Expanded Initial Study #04-14 (Mitigated Negative Declaration) for the Ranchwood Annexation] remains sufficient (Section 15162 Findings), and approve Vesting Tentative Subdivision Map #1288, subject to the following conditions:

- 1. The proposed project shall be constructed/designed as shown on Exhibit 1 (Proposed Vesting Tentative Map) Attachment B of Staff Report #06-29, except as changed by other conditions.
- 2. All conditions contained in Resolution #1175-Amended ("Standard Tentative Subdivision Map Conditions") shall apply.
- 3. The proposed project shall comply with all standard Municipal Code (including R-1-5 design standards) 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. 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.

PLANNING COMMISSION RESOLUTION #2876

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April 19, 2006

CFD procedures shall be initiated before final map approval. 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.

- 6. The developer/applicant shall indemnify, protect, defend, 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, or proceedings 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. 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. Street names to be approved by City Engineer.
- 9. Dedicate, by Final Map, all interior street rights-of-way and all necessary easements as needed for irrigation, utilities, drainage, landscaping, and open space.
- 10. The tentative map shows the removal of a City-owned storm water basin at the southwest corner of Gerard Avenue and 'M' Street. This retention basin shall be filled in and deeded over to the applicant.

PLANNING COMMISSION RESOLUTION #2876

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The developer shall provide additional basin area to accommodate the removal of the current City-owned basin.

- 11. All cul-de-sac bulbs shall be open-end style, including sidewalk connectors to adjacent streets and walls from back of house to back of house. Any wall openings shall be a minimum of 20 feet with wrought iron gates to allow pedestrian access per City design practices and handicapped –accessibility standards.
- 12. There shall be no valley gutters installed within this subdivision.
- 13. Additional right-of-way and easements shall be granted along Gerard Avenue to comply with the *Merced Vision 2015 General Plan* requirements to allow for a 74-foot wide collector and landscape/public facilities easements varying from 10-feet to 12-feet in width in front of a 6-foot-high masonry wall.
- 14. Provide for City review and approval of landscape/irrigation plans, prepared by a licensed landscape architect, for all areas of landscaping that are to be maintained by the City.
- 15. Reconstruct and extend Gerard Avenue and 'M' Street pavement to meet City Standards for Collector streets.
- 16. Compliance with the 40-foot visual corner is required for corner lots (approximately 15 lots), and may result in the applicant constructing smaller homes on these lots or increasing the front yard setbacks. A 4-foot encroachment for the porch area can be allowed within this area. Details to be worked out with staff.
- 17. At the building permit stage, the site plans for each lot shall include a paved or concrete area designated for refuse containers with paved access to the street. This pad shall be located either in the side yard or back yard and shall be sized to accommodate the storage of 3 refuse cans/containers.
- 18. The following Courts will need to be designated as local streets: Marcus, Christine, Sherry, & Veronica (49 to 64-foot right-of-way) and cul-de-sac bulbs will need to be labeled as temporary on the Final Map. The streets shall have a temporary turn-around area until such

PLANNING COMMISSION RESOLUTION #2876

Page 4

April 19, 2006

time as development to the west permits for these streets to be extended.

- 19. The drainage basin shall be designed in an open manner with no barriers, fences, etc., hindering its use. A recommended slope of 6:1 should be provided to allow for City Public Works staff to operate their equipment and maintain this area in an efficient manner.
- 20. The pedestrian opening between Gerard Avenue and Brent/Dillon Courts shall be a minimum width of 50-feet with a sidewalk a minimum of 8-feet in width. The entire 50-foot-wide area shall be landscaped and improved per City standards. (Details to be worked out at the Final Map stage.)
- 21. There shall be a minimum of a 20-foot all weather access easement along the southern portions of Lots B and C. There shall be two emergency access gates installed at the two southern stub streets (M Street and Calle Street) as they intersect with Lots B and C.

Upon motion by Commissioner Ward, seconded by Commissioner Fisher, and carried by the following vote:

AYES:

Commissioners Acheson, Amey, Fisher, Ward, Burr, and

Chairman Shankland

NOES:

None

ABSENT:

Commissioner Conte

Adopted this 19th day of April, 2006

Chairman, Planning Commission of the City of Merced, California

ATTEST:

n:shared:planning:PC Resolutions:#2876 VTSM #1288 Cypress Terrace

RECORDING REQUESTED BY:

City of Merced, A California charter municipal corporation

WHEN RECORDED MAIL TO:

City of Merced City Clerk 678 West 18th Street Merced, California 95340

Exempt Recording Per Gov't Code Section 6103

(Above for Recorder's Use Only)

DOCUMENT TITLE

SUBDIVISION AGREEMENT WITH CONTINUING COVENANTS (CFD CONDITION)

A SUBDIVISION	ON AGREEMENT	BETWEEN THE CITY OF	MERCED
AND STONE	FIELD HOME, INC	., A CALIFORNIA CORPO	DRATION,
	FOR CYPRESS T	ERRACE 6, PHASE A	
TO BE REC	CORDED CONCUP	RRENTLY WITH THE FIN	AL MAP
FILED THIS _	DAY OF	2019, AT	M.
IN BOOK	OF OFFIC	CIAL PLATS, AT PAGES _	,
	MERCED CO	UNTY RECORDS	

SUBDIVISION AGREEMENT

(CFD Condition) (Bonds as Security)

THIS AGREEMENT, made and entered into	
2019, between the City of Merced, a California Charter Municipal	
Corporation, hereinafter called "City," and Stonefield Home, Inc., a	
California Corporation, hereinafter called "Subdivider," relates to the	
installation of improvements within Cypress Terrace 6, Phase A, a	
subdivision of real property within the corporate limits of "City."	

RECITALS

- A. The Planning Commission of City, on April 19, 2006, adopted Resolution No. 1288 approving the tentative map of the above mentioned subdivision.
- C. Section 18.24.100 of the Merced Municipal Code requires certain improvements within said subdivision.
- D. Improvement plans for said subdivision have been approved by the City.
- E. The "Subdivision Map Act" and Section 18.24.150 of the Merced Municipal Code require certain security to guarantee the installation of said improvements.
- F. Inspection fees required in accordance with Section 18.24.110 of the Merced Municipal Code have been paid.
- G. Condition of Approval of the tentative subdivision map No. 5 requires the Subdivider to have established a Community Facilities District

("CFD") for public safety, maintenance, and other services prior to obtaining a Final Map for the property. This property was annexed into the City's CFD 2003-2 for Services on February 20, 2007.

Based upon the foregoing recitals, 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 parties hereto mutually agree as follows:

AGREEMENT

AGREEMENT TO CONDITIONS IMPOSED

Subdivider, for himself and all successors thereto, acknowledges and agrees to all conditions imposed in the Planning Commission Resolution approving the Tentative Map as identified in Recital A above.

2. IMPROVEMENTS

A. Subdivider agrees to cause all improvements to be made and constructed in said subdivision within twelve (12) months of the date of City approval of this Agreement, in full compliance with the requirements of approved Tentative Map, the Conditions of Approval thereto, and the City's "Standard Designs for Common Engineering Structures," and with the improvement plans approved by City and any changes or alterations in such work required by City, and to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of said work, and for any work or labor done thereon of any kind, and any amounts due under the Unemployment Insurance Act with respect to such work or labor.

B. The Subdivider may request an extension of time to complete the terms hereof. Such request shall be submitted to the City in writing no less than four (4) weeks before the expiration date hereof, and shall contain a statement of circumstances necessitating the extension of time. The City shall have the right to review the provisions of this Agreement, including the construction standards, cost estimate, and improvement security, and to require adjustments therein if any substantial change has occurred during the term hereof.

C. If the Subdivider fails or neglects to comply with the provisions of this Agreement, the City shall have the right at any time to cause said provisions to be met by any lawful means, and thereupon recover from the Subdivider and/or his surety the full cost and expense incurred.

3. SECURITY—FILING OF THE SAME

The Subdivider shall file securities for this Agreement per Sections 66496 and 66499 of the Government Code as follows and as shown on Exhibit "A" attached hereto:

- A. To secure faithful performance of this Agreement, security in an amount equal to one hundred (100%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.
- B. To secure payment to the contractor, his subcontractors, and to persons furnishing labor, materials, or equipment to them, security in an amount equal to fifty (50%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.
- C. To secure the guarantee and warranty of the work for a period of one (1) year following the completion and acceptance of the work, security in an amount equal to fifteen (15%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to final acceptance of the work by the City.
- D. To secure payment of the cost of setting of monuments, security in an amount equal to one hundred (100%) percent of the estimated cost of setting such monuments as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.

If security is furnished in the form of a bond or bonds, such bonds shall be executed by a corporate surety company authorized to transact surety business in the State of California. Liability for security furnished as

described herein shall be limited as set forth in Government Code Sections 66499.9 and 66499.10.

4. SECURITY—RELEASE OF THE SAME

Release of Securities shall be as follows:

- A. Security given for faithful performance may be released thirty-five (35) days after recording Notice of Completion of the work provided that evidence of recording of the Notice of Completion has been furnished to the City, the City has finally accepted the work, and provided the security has been furnished to the City to guarantee and warrant the work for one (1) year following the date of such acceptance of the work.
- B. Security securing the payment to the contractor, his subcontractors, and to persons furnishing labor, materials, or equipment may be released six (6) months after recording Notice of Completion provided no claims have been filed with the City in accordance with the Subdivision Map Act.
- C. The security guaranteeing that the completed work remains satisfactory during the required one-year warranty period may be released upon correction, by Subdivider, of any defects in the work existing at the end of the warranty period.
- D. Monument security may be released in accordance with the provisions of Section 66497 of the Government Code.

In the event that improvements do not conform to the plans and specifications or defects are not corrected within the time limits specified by City, the City shall have the authority to order the necessary work done and to recover the cost of such work, as well as any costs of enforcing such obligation, including attorney fees, from the Subdivider and the Subdivider's surety or the financial institution providing the Instrument of Credit.

INSPECTION

City shall inspect all improvements made in connection with said subdivision for compliance with City requirements. Subdivider shall give at

4

least twenty-four (24) hours' notice to City, including at least one full working day prior to any inspection. Improvements installed without inspection by the City shall be subject to rejection. Subdivider shall pay to City an amount equal to three (3) percent of the total estimated cost of the improvements as determined by City to cover the cost of inspection. Inspection by the City shall in no way relieve the Subdivider or its sureties of full responsibility for defective materials or workmanship. Any costs associated with testing of improvements shall be paid by the Subdivider in advance of the testing.

Neither final inspection nor acceptance of any public improvements for said subdivision will be permitted prior to receipt by City of sufficient monies to cover the cost of testing and inspection exceeding the above deposit.

6. FULFILLMENT OF CONDITIONS OF APPROVAL.

Condition of Approval No. 5 of Subdivider's Tentative Map requires Subdivider to have formed a CFD prior to obtaining approval of a Final Map for Subdivider's project. Cypress Terrace 6 was annexed into Community Facilities District (CFD) 2003-2 (Services) as part of Annexation No. 4 approved by the Merced City Council on February 10, 2007. Therefore, this condition has been satisfied.

7. SAFETY

Subdivider shall perform all work in accordance with the applicable sections of Title 8 of the California Code of Regulations (CAL OSHA), and the "WATCH" (Work Area Traffic Control Handbook) published by Building News, Inc., and available at the City Engineer's office. Provisions shall be made by Subdivider for protection of the traveling public on all public roads affected by the improvements.

Barricades and related facilities shall be placed in such number and in such locations as for public safety, and at night they shall be equipped with flashing yellow lights. City reserves the right to require and Subdivider shall promptly install or place additional barricades or other facilities to assure public safety if City shall deem the same to be necessary or desirable for public safety. Subdivider is responsible for all liability which may arise out of work herein permitted whether or not public property, and

shall indemnify, protect, defend, and hold City harmless from any and all claims, damages (including injury or death to any person or persons), or causes of action arising therefrom or related thereto.

8. INDEMNITY

The Subdivider shall take and assume all responsibility for the construction of the improvements and the safety of operation in connection therewith. The Subdivider shall bear all losses and damages directly or indirectly resulting to the City, its officers, employees, and agents or others on account of the construction of the improvements, unforeseen difficulties, accidents, or any other causes whatsoever.

The Subdivider shall protect, assume the defense of and indemnify and save harmless the City, its officers, employees, and agents from all claims, loss, damage, injury—including the death of any person or persons, and liability of every kind, nature, and description, directly or indirectly arising from the construction of the improvements.

The Subdivider shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and 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, Subdivider shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Subdivider'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 Subdivider 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 Subdivider 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.

9. PREVAILING WAGES

Subdivider acknowledges that City has made no representation, express or implied, to Subdivider or any person associated with Subdivider regarding whether or not laborers employed relative to the construction of the improvements to be constructed pursuant to this Agreement must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Section 1720, et seq. ("Prevailing Wage Laws"). Subdivider agrees with City that Subdivider shall assume any and all responsibility and be solely responsible for determining whether or not laborers employed relative to the construction undertaken pursuant to this Agreement must be paid the prevailing per diem wage rate pursuant to the Prevailing Wage Laws or other applicable law.

Subdivider, on behalf of itself, its successors, and assigns, waives and releases City from any right of action that may be available to any of them pursuant to Labor Code Section 1781 or any similar law. Relative to the waiver and release set forth in this Section, Subdivider acknowledges the protections of Civil Code Section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

By initialing below, Subdivider knowingly and voluntarily waives the provisions of Section 1542 or any similar law solely in connection with the waivers and releases contained in this Section

Initials of City Manager

Initials of Authorized
Subdivider Representative

Subdivider shall indemnify, hold harmless and defend City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Subdivider, its contractor(s) and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of

Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with construction and installation of the improvements required pursuant to this Agreement. Subdivider's defense of the City shall be provided by counsel reasonably acceptable to the City.

The foregoing indemnity shall survive any termination of this Agreement.

10. INSURANCE

Subdivider further agrees that before commencing any work pursuant to this Agreement, Subdivider shall obtain, and at all times prior to final acceptance of all improvements hereunder, keep in full force and effect, insurance coverage in such limits and amounts, and covering such risks as shall be acceptable to City.

All policies of insurance must be issued by a company that is either:

- (1) Admitted to transact insurance business in the State of California:
- (2) On the "LESLI List," i.e., the List of Eligible Surplus Line Insurers; or,
- (3) In the form of a risk retention group ("RRG") so long as the RRG contains at least \$750,000 in capital, has been in operation for at least one year, and the reinsurance agreement associated with the RRG contains AM Best A rated insurers with an attachment point of \$250,000 or less.

All insurance companies must have an A.M. Best's rating of at least A- and a financial size of IX or X. All required policies shall contain an endorsement adding the Indemnified Parties under the agreement, specifically including but are not limited to, the City, its officers, employees, and agents, as additional insureds. The required policies shall stipulate that this insurance will operate as primary insurance for work performed by Developer and its sub-contractors, and that no other insurance effected by

City or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The additional insured endorsement required hereunder must be issued using ISO form CG 20 10 11 85, or the same form with an edition date no later than 1990. In lieu of CG 20 10 11 85, City will accept alternate additional insured endorsements on ISO forms CG 20 10 10 01 and CG 20 37 10 01, but only if both forms are used together and provided to City. The minimum coverage and limits shall be as follows:

COVERAGE	LIMITS
Workers Compensation	Statutory
Comprehensive General Liability,	
including or separately insuring	
liability assumed by contract	
Bodily Injury	\$1,000,000 per person
	\$1,000,000 per occurrence
Property Damage	\$ 500,000 per occurrence

Subdivider shall, prior to commencement of construction work, furnish to City a certificate of insurance, which shall provide that the above insurance shall not be cancelled without thirty (30) days prior written notice to City. Prior to acceptance of the improvements, the Subdivider shall provide the City with a copy of the endorsements required herein.

11. AS-BUILTS

Subdivider shall submit one (1) reproducible print (mylar) of the improvements "as-built" to City prior to release of securities.

12. NOTICE OF COMPLETION

City shall record a Notice of Completion with the Merced County Recorder immediately following City's acceptance of the improvements.

13. APPROVALS

This Agreement is subject to approval by the City Manager of City as to substance, and by the City Attorney as to form. Any improvement

securities tendered hereunder shall be subject to approval by the City Manager as to amount, and by the City Attorney as to form and legal sufficiency.

14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

15. 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.

16. 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.

17. AMENDMENT

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

18. INTEGRATION

This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understandings or agreements between the parties with respect to all or any part of the subject matter hereof.

19. 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.

20. 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.

IN WITNESS WHEREOF, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

CITY OF MERCED A California Charter Municipal Corporation City Manager ATTEST: STEVE CARRIGAN, CITY CLERK Assistant/Deputy City Clerk APPROVED AS TO FORM:

FUNDS/ACCOUNTS VERIFIED BY:

Finance	Officer	Date

DEVELOPER: STONEFIELD HOME, INC., A California Corporation

By: Greg Høstetler

Its: President

Address: 923 E. Pacheco Blvd.

Suite C

Los Banos, CA 93665

Telephone: (209) 826-6200

Taxpayer I.D. Number: <u>32-0439641</u>

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.

validity of that document.
State of California County of Werced)
on March 19, 2019 before me, A. Gonzalez, Notary Public (insert name and title of the officer)
personally appeared C1r-eq +h steller
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. A. GONZALEZ Commission # 2125912
Commission # 2135812 Notary Public - California
Merced County My Comm. Expires Dec 6, 2019
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)	
On before me,	(insert name and title of the officer)
personally appeared who proved to me on the basis of satisfactory evid subscribed to the within instrument and acknowled his/her/their authorized capacity(ies), and that by I person(s), or the entity upon behalf of which the person under PENALTY OF PERJURY under the paragraph is true and correct.	dence to be the person(s) whose name(s) is/are dged to me that he/she/they executed the same in his/her/their signature(s) on the instrument the erson(s) acted, executed the instrument.
WITNESS my hand and official seal.	
Signature	(Seal)

EXHIBIT A

Cypress Terrace 6 Phase A

The securities on this subdivision shall be according to, or equivalent to, either Method 1 or Method 2.

	Met	Method 2		
	Performance Bond	Labor/Material Bond	Letter of Credit	
Subdivision Improvements, Including monuments	\$375,391.63	\$187,695.82	\$450,469.96	
One-Year Warranty	\$56,308.74		\$56,308.74	

RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING THE FINAL SUBDIVISION MAP FOR THE CYPRESS TERRACE 6, PHASE A SUBDIVISION (#5366)

WHEREAS, a Tentative Subdivision Map for the Cypress Terrace 6, Phase A Subdivision was approved on April 19, 2006, by the Planning Commission; and,

WHEREAS, a Final Map conforming to the approved Tentative Map has been filed with the City of Merced; and,

WHEREAS, the City Engineer has reviewed the Final Map and certified that the Final Map substantially conforms to the conditionally approved Vesting Tentative Subdivision Map; and,

WHEREAS, all required certificates on said Final Map have been signed and, where necessary, acknowledged; and,

WHEREAS, the City has determined that the Final Map is statutorily exempt from the California Environmental Quality Act (CEQA) Statutory Exemptions, Title 14 of the California Code of Regulations Section 15268(b)(3) Ministerial Projects, Approval of Final Subdivision Maps and a Notice of Exemption is attached hereto.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES RESOLVE AS FOLLOWS:

SECTION 1. FINDINGS. The City Council finds and declares that:

1. The Final Map is statutorily exempt from the California Environmental Quality Act (CEQA), Statutory Exemptions, Title 14 of the California Code of Regulations Section 15268(b)(3) Ministerial Projects, Approval of Final Subdivision Maps.

- 2. The Final Map is in substantial compliance with the Tentative Map.
- 3. The discharge of waste from the proposed subdivision into the sewer system will not result in violation of existing requirements of the Water Quality Control Board.
- 4. The Final Map is consistent with applicable general and specific plans.
- 5. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
- 6. The site is physically suitable for the proposed type of development.
- 7. The site is physically suitable for the proposed density of development.
- 8. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife of their habitat.
- 9. The design of the subdivision or the type of improvements are not likely to cause serious public health problems.
- 10. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.
- 11. An agreement has been entered into with the developer satisfactory to guarantee completion of public improvements within the subdivision.

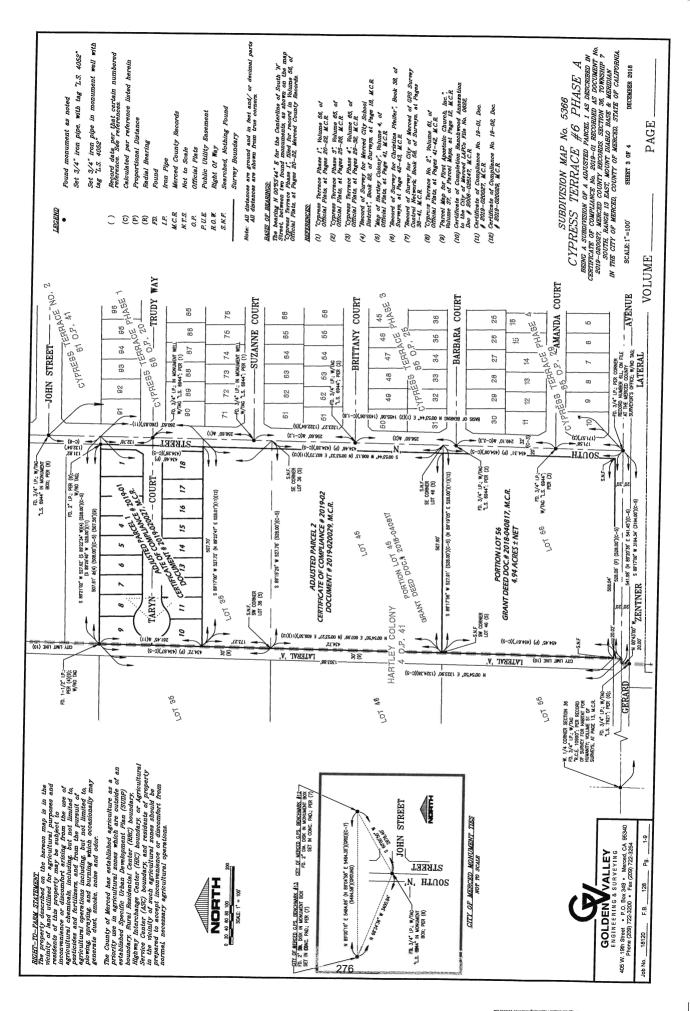
SECTION 2. APPROVAL OF MAP. The City Council hereby approves the Final Map for the Cypress Terrace 6, Phase A Subdivision and hereby accepts on behalf of the public all Streets, Courts, and Avenues (subject to Subdivision

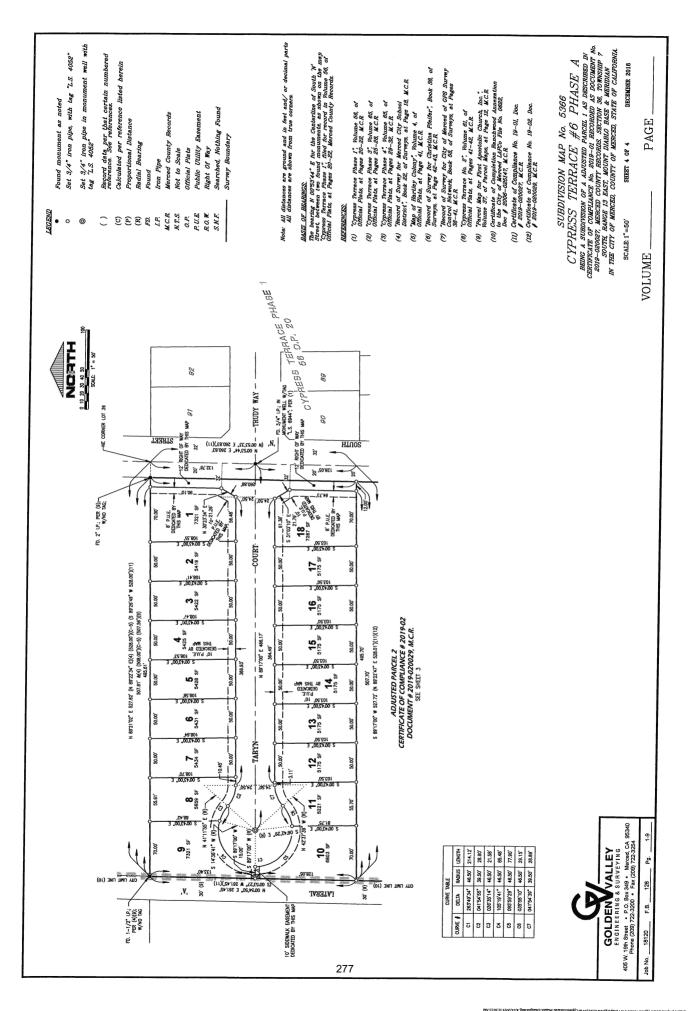
improvements), and all easements and dedications as shown on the map	at Exhibit
"A" attached hereto and incorporated herein by this reference.	

PASSED AND A regular meeting held on called vote:	ADOPTED by the the day of	e City Council	of the City of Merced at a _ 2019 by the following
AYES:	Council Memb	pers:	
NOES:	Council Memb	pers:	
ABSTAIN:	Council Memb	ers:	
ABSENT:	Council Memb	ers:	
	A	PPROVED:	
		Mayor	
ATTEST: STEVE CARRIGAN, C	ITY CLERK		
BY:	ζ		
(SEAL)			
APPROVED AS TO FO	RM:		
BY: <u>Inuedia a 1</u> City Attorney	0mh 3.13. Date	<u>~1</u> 9	

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	SURFICIONS STAIRMENT This map was propared by me or under my direction and is based upon a fibt map was propared by me or under my direction and is based upon a fibt may be understanded of the Subdivious Map Act and You'll man in Frequest of Grey Hösteler on Becember 13, 2018, I havely state that the Frequest of Grey Hösteler on Becember 13, 2018, I have been at the table supreed tentative map, if any, and that all monuments shown have may of the character and occupy the positions indicated or that they will be set in those positions before October 28, 2019 are or will be sufficient to enable the surrey to be retraced.	Duane J. Andrews, L.S. 4052	GIT! ENGINEER'S STATEMENT. I hereby state that I have examined this final map and that the subdivision shown hareon is substantially the same as it appeared on the tentive map and any approved alterations thereof, that all the provisions of the California Subdivision Map Act and local ordinance applicable at the time of approval of the tentative map have been compiled with.	Signature: Michael R. Beltran II, R.C.B.83916 City Angineer	Date:	CITY SURVENCES SYMMENT I bereby state that I have examined this Final Map and it complies with all provisions of Chapter 2 of the Subdivision Map Act and that I am satisfied that this Final Map is technically correct.	Signature: Jos M. Cardose, P.L.S. 8851	Da te:		SUBDIVISION MAP No. 5366 CYPRESS TERRACE #6 PHASE A BEING A SUBDIVISION OF A ALMOSTOR PARCEL IS DESCREBED IN CRETIFICATE OF COMPLIANCE NO. 2019—01 RECORDED AS DOCUMENT NO. SOUTH RANGE IS RAT. MOUNT DIAGO BASE A MERSHIP 7	IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA. SHEET I OF 4	VOLUMEPAGE
	TITLE REPORT PRELIMINARY TITLE PROPORT Prepared by FORMIN Alternal Title Company Document Alpho 04 2010121-DN Affect Seed In preparation of this plat and considered a part hereto	CHILLIAD SECRETIONS: PURSULAYT TO SECTION 86428(a)(3)(A)(1) OF THE SUBDIVISION MAP ACT. THE SIGNATURES OF THE FOLLOWING PARTIES HAVE BEEN OMITTED 1) NONE OF RECORD	SOUIS ERPORT. As substituted the land within the boundaries of the substitution was made uport covering the land within the boundaries of the substitution was made by Technicon Engineering Services Inc., 4539 N. Brantoy #108, Fresno, CA 93722 bearing the date of June 27, 2018, a copy of which is on life with the City of Merced. Project No. 1800438,001			RECORDER'S STATEMENT. No	Barbaro J. Lerey, County Recorder	By: Deputy	SUBDIVISION AGREEMENT Subdivision Agreement between the City of Merced and STONSTELD HOME INC. for CIPRESS TRRAGE 46 PHASE A recorded as Document Number . M.C.R.			
	ONNERS STAINBARD. The understand being all parties having any record title interest in the land within the understand being shown on the map harby consent to the land within the understand so this map and hereby investably offer for dedication for pullic use all Streets, Avenues, and Courts, all essements and dedications indicated on this map and hereby consent to the preparation and recordation of this map. For Stonefield Home, inc., a California Corporation	Signature Signature Name & Title	Br. Signature Name & File Name Withe State: Richity Mational File insurance Company, as Trustee under a Deed of Trust.	Br. Diane H. Robinson, Asst. The President	2	74		CITY CLERK'S STATEMENT. I. Sterm S. Carrigan, City Clerk of the City of Merced, do harrby certify that this map was approved at a Regular meeting of the City Council of the City of Merced, State of California on this ady of any of Streets, Aranues, and that the Council did accept on behalf of the Public, all Streets, Aranues, and Courts, (Subject to Subdirsion Improvements being accepted by the City of Merced), all essempais and dedications indicated on this map and accept all Merced).	IN WINESS WHEREOF, I bereto set my hand this day of	Signature: Steven S. Carrigan, City Clerk	GOLDEN VALLEY KONNER IN ON SURVEYING ACTIVE OF THE SUR	4.04 N Ten Street 27-77 Door 259 Y Marrier 27, 59-54 U Street 27, 59-5

	State of California County of	who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and schrowledged to me that he skidt cheer same than a chrowledged to me that he skidt cheer same than the state of the same in his farther. Heart authorited supecity(ses), and that by his farther. I signature(s) on the instrument the person(s), or the entity upon behalf of while the person(s) acted, accounted the same in the state of california that the foregoing personant to the State of California that the foregoing personant is true and correct Signature Commission No. Commission Expires (DO NOT STAMP)	SUBDIVISION MAP No. 5366 CYPRESS TERRACE #6 PHASE A BRIG A SUBDISION OF A ADJUSTED PASSEL IS DESCREED IN
are secured or are managed in a signed the document to which this Cartificate is attached, and not the truthfulness, accuracy, or walidity of that document.	Jane V de antonna Comry of 2018, before me a Motery Public personally appeared	d to me on the basis of satisfactory evidence to be whose same(a) are subscribed to the within instrument to me that he folly/they executed the same in four authorized capacity(ies), and that by his/het/they to me the instrument the person(a) or the entity up the person(a) acted, arecuted that instrument the person(a) acted, arecuted the instrument and correct in that the foregoing paragraph is true and correct in that the foregoing paragraph is true and correct in Expires (DO NOT STAMP)	
the femality of the many composing the serifices only A note to called the document to which this for Certific Certific that document who signed the document to which they certific that document and not the fruthinhess accuracy or wildlify of Certific that document and not the truthinhess accuracy or wildlify of Certific Certific that document of Celtifornia State of Celtifornia	2019 before me precially appeared	who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the which instrument and scienowics) whose name(s) are subscribed to the which instrument and the the holy lay have been in the same in this for the area capacityties), and that by his/har/their signature of person(s) and that by his/har/their signature of minimary of person(s) acted, excuted the instrument the person(s) or the minty upon behalf of which the person(s) acted, excuted the instrument the signature of minimary or persure the instrument is true and correct of californ that the foregoing paragraph is true and correct commission No. Commission No. Commission Expires Commission Commission Expires	





CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.11. Meeting Date: 9/3/2019

Report Prepared by: Wally Broughton, Public Works Manager - Operations

SUBJECT: Authorization to Purchase Nine Budgeted Fleet Vehicles, Including One Caterpillar Backhoe from Holt of California for \$131,128.90, Two Articulating Overcenter Aerial Devices (Tree Trimming Trucks) from Altec Industries for \$144,515 each, One Street Sweeper from Municipal Maintenance Equipment for \$299,992.14, One Front Loader Refuse Truck and Four Side Loader Refuse Trucks from Ruckstell for \$1,415,798.13; and to Waive the Competitive Bidding Requirement to Allow the Purchases to be Made Through a Cooperative Purchasing Agreement with Sourcewell

REPORT IN BRIEF

Considers authorizing a waiver of competitive bidding requirement pursuant to Merced Municipal Code Section 3.04.210 to purchase nine currently budgeted and Council approved fleet vehicles through the government procurement program Sourcewell.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the purchase of one Caterpillar Backhoe Loader in the amount of \$131,428.90 from Holt of California; and,
- B. Approving the purchase of two Articulating Overcenter Aerial Devices (Tree Trimming Trucks) in the amount of \$144,515.00 each from Altec Industries; and,
- C. Approving the purchase of one Schwarze Street Sweeper in the amount of \$299,992.14 from Municipal Maintenance Equipment; and,
- D. Approving the purchase of one Front Loader Refuse Truck in the amount of \$256,307.28 and Four Side Loader Refuse Trucks in the amount of \$1,159,490.85 from Ruckstell California Sales Co, Inc.; and,
- E. Waiving the City's competitive bidding requirement as permitted by Merced Municipal Code section 3.04.210 and authorizing the purchases to be made with cooperative purchase agreements through Sourcewell, a government procurement program; and,
- F. Authorizing the City Manager or the Assistant Manager to execute any necessary documents for the purchases specified above, the Finance Officer to make the appropriate budget adjustments and City Buyer to issue the Purchase Orders.

File #: 19-480 Meeting Date: 9/3/2019

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Refer to staff for reconsideration of specific items; or,
- 5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Merced City Charter, Section 200. Municipal Code Section 3.04.210 - Exemptions from competitive bidding.

CITY COUNCIL PRIORITIES

As provided for in the FY 19/20 Adopted Budget.

DISCUSSION

History

Sourcewell offers equipment/vehicle purchase programs to government entities nationwide; specifications are created and Request for Bids are sought by the respective programs for a wide variety of equipment used by local governments. As a result of the nationwide scope of these programs, the City is able to purchase specialized equipment for much less than the more traditional method of creating specifications and soliciting bids in-house.

Over the last several years, the City has purchased a variety of equipment not provided by local venders including, street sweepers, leaf trucks, fire trucks, backhoes, etc. through the Sourcewell government procurement program with great success.

Buying these vehicles directly through these outside programs requires waiving the City's competitive bid requirements. In addition to cost savings, purchasing directly from these government programs allows the city to standardize equipment, which is a desire of the Fleet Services Division. With standardized equipment, Fleet Services will have the ability to reduce parts inventory, and ensure the vehicle controls, handling, and maneuvering are the same for vehicles that are currently being used by City employees. The vehicles requested will be the same make and model as other City equipment.

The Public Works Department, Fleet Services Division, is requesting Council authorize the purchase of nine currently budgeted fleet vehicles utilizing the nationwide government procurement service Sourcewell via Holt of California, Altec Industries, Municipal Maintenance Equipment (MME), and Ruckstell California Sales Co. These vehicles include one backhoe loader, two tree trimming trucks, one street sweeper, as well as five refuse vehicles.

All listed vehicles to be purchased is budgeted in the FY 19/20 adopted budget. All vehicles

File #: 19-480 Meeting Date: 9/3/2019

requested for purchase in this report will meet the California Air Resources Board (CARB) Tier IV final clean air vehicle pollution rating.

Section 3.04.210 of the Merced Municipal Code provides that the City Council can approve a waiver of the City's competitive bidding requirements when such purchases are made pursuant to cooperative purchasing in conjunction with other governmental entities.

Staff requests waiving the bidding requirements in order to standardize equipment and utilize the government pricing contracts.

IMPACT ON CITY RESOURCES

The vehicles were approved in the FY 2019/20 adopted budget; no additional funding is needed. All vehicles will be purchased using funds budgeted in Fund 674 - Fleet Replacement, except for two Side Loader Refuse Trucks that will be purchased using funds budgeted in Fund 558 - Refuse.

ATTACHMENT

- 1. Holt of California Quote (Backhoe)
- 2. Altec Quote (Tree Trimming Truck)
- 3. MME Quote (Street Sweeper)
- Ruckstell California Sales Quote (Refuse Trucks)
- 5. Sourcewell agreement



July 10, 2019

CITY OF MERCED
Account # 0129519
1776 GROGAN AVENUE
MERCED, California 95340
Attention: WALLY BROUGHTON

New Caterpillar Model: 420F2 Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

STOCK NUMBER: M21252

SERIAL NUMBER: 0HWC04556

YEAR: 2019

SMU: 4

ADDITIONAL SPECIFICATIONS

Reference #	Description of Material and Equipment	Reference #	Description of Material and Equipment
450-8448	420F2 BHL ST, TIER 4, HRC	337-7436	BUCKET-MP, 1.3 YD3, PO, BRKTS
450-8730	STICK, EXTENDABLE, 14FT	9R-5321	CUTTING EDGE, TWO PIECE
547-6095	POWERTRAIN, 4WD, POWERSHIFT	175-7877	BUCKET, HOE, (NONE)
450-8757	ENGINE, 74.5KW,C4.4 ACERT, T4F	430-9944	INSTRUCTIONS, ANSI
450-8530	HYDRAULICS, MP, 6FCN/8BNK, ST	421-8926	SERIALIZED TECHNICAL MEDIA KIT
447-0049	PRODUCT LINK, CELLULAR, PL641I	398-2681	RIDE CONTROL
450-8683	CAB, DELUXE	398-2853	LINES, COMBINED AUX, E-STICK
491-6734	WORKLIGHTS (8) HALOGEN LAMPS	457-2797	BATTERY, HEAVY DUTY
433-4806	SEAT, DELUXE FABRIC	423-7607	PLATE GROUP - BOOM WEAR
206-1748	SEAT BELT, 3" SUSPENSION	461-6839	SHIPPING/STORAGE PROTECTION
450-8715	AIR CONDITIONER, T4	462-1033	RUST PREVENTATIVE APPLICATOR
380-8961	TIRES, 12.5 80/19.5L-24, FS	436-5177	ENG SN: W7N59689
337-9696	COUNTERWEIGHT, 1015 LBS	A35000	THUMB, HYDRAULIC, NO TINE, BHL - A3500
9R-6007	STABILIZER PADS, FLIP-OVER	A34845	COUPLER, PG, MAN.D.LOCK, BHL F - A3484

WARRANTY INFORMATION

Standard Warranty:

12 months / unlimited hours

Extended Warranty:

420-60 MO/5000 HR POWERTRAIN + HYDRAULICS + TECH (Tier 4).

Warranties run concurrently and start at machine delivery.

SELL PRICE EXT WARRANTY NET BALANCE DUE SALES TAX (8.25%) AFTER TAX BALANCE

\$121,412.38 Included \$121,412.38 \$10,016.52 \$131,428.90

F.O.B/TERMS: EMD - STOCKTON

Quote in accordance with SourceWell (NJPA) Contract 032515-CAT

List price \$140,911.00
Contract discount 22% -\$31,000.42
Prep, del. & ext war
Bkt, Thmb, QC \$8,296.00
Holt discount -\$1,294.20
Sell price \$121,412.38 + tax

Page 1 of 2

This quote is o	good for (30) days.	
Accepted by _	(Please Print)	Date,
Signature _		THE ACCOUNT OF THE PROPERTY OF

Sincerely, Joe Gomes Machine Sales Representative Holt of California jgomes@holtca.com 12096010047



Opportunity Number: 1204197 Quotation Number: 537102 Sourcewell Contract #: 012418-ALT

Date: 7/12/2019

Quoted for: CITY OF MERCED

Customer Contact: Phone: / Email:

Quoted by: Keith Clement

Phone: / Email: 919-528-8054 / KEITH.CLEMENT@ALTEC.COM

Altec Account Manager: WILLIAM HAMBURGER

Alle	Account manager. Will	-IAM I IAM DUNGER	
REF	RENCE ALTEC MODEL		
1	LR756	Overcenter Articulating Aerial Device (Insulated)	\$139,091
L		position rational and residue (moduled)	ψ135,051
(A.)	SOURCEWELL OPTIONS	ON CONTRACT (Unit)	
1			
2			
3			
4			
		I	L
/A.4.\	COURSEMENT OPTIONS	ON CONTRACT (C	
(A1.)	SOURCEWELL OPTIONS	ON CONTRACT (General)	
1			
2			l
3			
4			
5			
6			
7			
8			
·		SOURCEWELL OPTIONS TOTAL:	\$139,091
		SOURCEMELE OF HORS TOTAL.	Ψ103,031
(B.)	OPEN MARKET ITEMS (C	Customer Requested)	
1		LR7-56 M2-106 4x2 Auto	
2	UNIT & HYDRAULIC ACC		
3			
4	BODY & CHASSIS ACC		
5			
6	FINISHING		
7	CHASSIS		
8	OTHER		
		OPEN MARKET OPTIONS TOTAL:	\$0

SUB-TOTAL FOR UNIT/BODY/CHASSIS: \$139,091

Delivery to Customer: \$5,424

TOTAL FOR UNIT/BODY/CHASSIS: \$144.515

(0	:.)	ADDITIONAL ITEMS (item	s are not included in total above)	Ψ1-1-1, 010
	1			
L	2			
	3			
	4			

Pricing valid for 45 days

NOTES

PAINT COLOR: White to match chassis, unless otherwise specified

WARRANTY: Standard Altec Warranty for Aerials and Derricks - One (1) year parts warranty One (1) year labor warranty Ninety (90) days warranty for travel charges (Mobile Service) Limited Lifetime Structural Warranty. Chassis to include standard warranty, per the manufacturer.

TO ORDER: To order, please contact the Altec Account Manager listed above.

CHASSIS: Per Altec Commercial Standard

DELIVERY: No later than **240-320** days ARO, FOB Customer Location

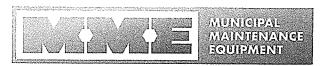
TERMS: Net 30 days

<u>BEST VALUE:</u> Altec boasts the following "Best Value" features: Altec ISO Grip Controls for Extra Protection, Only Lifetime Warranty on Structural Components in Industry, Largest Service Network in Industry (Domestic and Overseas), Altec SENTRY Web/CD Based Training, Dedicated/Direct Gov't Sales Manager, In-Service Training with Every Order.

TRADE-IN: Equipment trades must be received in operational condition (as initial inspection) and DOT compliant at the time of pick-up. Failure to comply with these requirements, may result in customer bill-back repairs.

BUILD LOCATION: CREEDMOOR, NC

LR7-56 M2-106 4x2 Auto Sourcewell



CSLB #980409 DIR 1000004282 www.source-mme.com Toll Free 1-888-484-9968

July 2, 2019

City of Merced 1776 Grogan Avenue Merced, CA 95341

Tel: 209-388-8709 Cell: 209-564-7978

broughtonw@cityofmerced.org

Attention: Wally Broughton, Fleet Supervisor

We are pleased to provide the enclosed contract pricing sheet off the Sourcewell Contract No. 122017-SZW for the Schwarze Model A9 Monsoon Sweeper mounted on a new 2019 Peterbilt 220 truck chassis for your review.

Summary:

Complete Unit per attached Sourcewell price sheet

Price F.O.B. Merced, CA 8.25% Estimated Sales Tax

\$277,129.00 22,863.14

Total

\$299,992.14

City's Purchase Order to be prepared and sent directly to Schwarze Industries Inc.

1055 Jordan Road, Huntsville, AL 35811 M.J. Dubois (410) 924-1004 njpa@schwarze.com

- · Pricing includes delivery and on-site training.
- Normal delivery 180-450 days A.R.O., depending on chassis availability.
- Due to California emissions requirements, special permits may be required on engines.
 MME cannot provide these permits and we recommend you contact your local Air
 Resources Management District for the specific requirements.
- Sales tax applicable at time of delivery will be shown on invoice.
- Terms per Sourceweil Program.

Thank you for your continued interest in this fine product. Should you have any questions or need additional information, please let us know. We look forward to being of service.

Sincerely,

Municipal Maintenance Equipment, Inc.

James Wheeler

James Wheeler, General Manager

Enclosure



7/2/2019

NEW A9 SWEEPER UNIT - SOURCEWELL CONTRACT NO 122017-SWZ

Amount CALIFORNIA Dual gutter brooms shall be 44" minimum diameter each and provide a minimum of 144" sweeping path (including suction head). Schwarze Model A9 Monsoon TIER IV Street Sweeper 134 HP John Deere Auxiliary engine unit with all standard equipment 2019 Peterbilt 33,000 model 220 chassis with Automatic Transmission and A/C with 220 HP diesel engine, right hand steering Water tank capacity shall not be less than 600 gallons and be constructed of polyethylene for strength and corrosion resistance Location: Description Hopper mounted spray bar with 4 additional nozzles Water tank low level alarm & indicator CITY OF MERCED Water tank sight gauge side of tank Standby, Full with throttle ramp 10 point remote grease manifold Dual gutter broom hydraulic tilt Variable speed gutter brooms Body mounting on chassis Dual GEO gutter broom Front mounted spray bar Single camera system Alarm, smart backup Customer:

Page 1 of 2

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Description	Amount
Auto drop down screens	
6" hopper drain, stainless steel	
Hopper sound suppression	
Hopper deluge conical spray	
Hopper up alarm & indicator	
Hopper auxiliary engine screen cover	
Hopper dump switches Exterior right hand side	
Low hydraulic level indicator in cab	
Rear mounted LED strobe with guard	
LED traffic guide arrow board	
Cab mounted conventional LED strobe with guard	
Air horn	
One year / 1200 hours warranty on sweeper	
Local dealer pre-delivery inspection and training at customer facility	
DELIVERY CUSTOMER FACILITY	
TOTAL UNIT COST	\$277 129 00
SALES TAX - 8.25%	\$22.862.14
TOTAL SOURCEWELL MEMBER COST WITH TAY	477,002.14
Vendor/Contract Holder	\$299,992.14

Vendor/Contract Holder:
SCHWARZE INDUSTRIES
Contact: M.J. DuBois
Phone: 410-924-1004 Contact: Phone:

1055 JORDAN ROAD HUNTSVILLE, AL 35811 Email: <u>SOURCEWELL@SCHWARZE.COM</u>

RUCKSTELL

CALIFORNIA SALES CO., INC. P.O. Box 12543 Fresno, CA 93778

Estimate

Date	Estimate #
8/13/2019	03430

Name / Address

City of Merced 678 W. 18th Merced, CA 95340

		Rep	Requested	by:	FOB	P.O. No.
		EI	WALLY		FRESNO	
Item	Description	:	Qty	(Cost	Total
Equipment	34 YARD EJECT W. C. NEWAY FRONT LOAD FOLLOWING OPTIONS MOUNTED ON A 2021 DRIVE PETERBILT FULL FACTORY MOUNT SERVICE HOIST DENISON LONG LIFE VANE PUMP HALOGEN WORK LIGHTS (2 IN HOPPER / 1 STROBE LIGHT (SURFACE MOUNT) INTEGRATED STROBE LIGHT PACKAGE SY ROUND LIGHTS UPPER TAILGATE INTEGRATED STROBE LIGHT PACKAGE SY ROUND LIGHTS LOWER TAILGATE BACK-UP ALARM AUTO VOLUME ADJUSTADB) OVER HEIGHT WARNING BUZZER (ARMS A DUAL CAMERA / FLAT SCREEN COLOR 5.6" ACRYLIC URETHANE ENAMEL WHITE 8,000 POUND ARMS DECELERATION ON ARMS DOWN FUNCTION DRIP PAN BELOW TAILGATE SEAL 2 - YEAR CYLINDER WARRANTY 1 - YEAR BODY WARRANTY (STANDARD) 1 - YEAR HYDRAULIC WARRANTY FORK THICKNESS 1 1/2" 100K SMOOTH NO 1	O MODEL 520 I ON CANOPY) STEM - 2 STEM - 2 ABLE (87 - 112 ABOVE CAB) MONITOR			232,154.53	232,154.537
Thank you for you	r business.		Subt	otal		
			Sale	s Tax	(8.25%)	
			Tota	al		

Signature

(Phone #	559-233-3277	Fax#	559-233-9844	E-mail	info@ruckstell.com)
`						<u> </u>	

RUCKSTELL

CALIFORNIA SALES CO., INC. P.O. Box 12543 Fresno, CA 93778

Estimate

Date	Estimate #
8/13/2019	03430

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City of Merced 678 W. 18th Merced, CA 95340

Phone #

559-233-3277

		Rep	Requested by	r. FOB	P.O. No.
		EI	WALLY	FRESNO	
Item	Description		Qty	Cost	Total
Freight	STEEL SLIDING ACCESS DOOR CLEAN OUT CHUTES STEEL CANOPY IN BOUND SHIPPING COST SOURCE WELL CONTRACT # 112014-NWY SOURCE WELL MEMBER # 2325			5,000.00	5,000.00
Thank you for your	business.		Subtot	al	\$237,154.53
Valid for 20 days fr	om date of estimate. This estimate is not a contract or e total price to complete the work stated above, based to	a bill. It is wha	Sales '	Гах (8.25%)	\$19,152.75
inspection. If addit	ional parts and/or labor are required, we will inform you work. A signed estimate is required prior to beginning	u prior to	Total		\$256,307.28

559-233-9844	E-mail	info@ruckstell.com

Fax#

Signature

RUCKSTELL

CALIFORNIA SALES CO., INC. P.O. Box 12543 Fresno, CA 93778

Estimate

Date	Estimate #
8/13/2019	03431

Name / Address

City of Merced 678 W. 18th Merced, CA 95340

	(Rep	Requested by:	FOB	P.O. No.
		EI	WALLY	FRESNO	
Item	Description		Qty	Cost	Total
Equipment	31 YARD NEWAY SIDEWINDER W / THE FOL OPTIONS MOUNTED ON A 2020 MODEL 520 FPETERBILT FRONT MOUNT TANDEM VANE PUMP HALOGEN MID BODY BACK-UP LIGHTS (2) HALOGEN BACK-UP LIGHTS ON TAILGATE (HALOGEN WORK LIGHTS (1 IN HOPPER / 1 CTOWARD ARM) INTEGRATED STROBE LIGHT PACKAGE SYSTOWND LIGHTS MOUNTED UPPER UPPER LIGHT BAR W / (2) STOP / TAIL (STAR ACRYLIC URETHANE ENAMEL (WHITE) ELECTRONIC FILTER BY-PASS INDICATOR IN ARM CONTROLS ROCKER SWITCHES UNDER SHOVEL / BROOM RACK 18 X 18 X 24 STEEL TOOL BOX PRE-CRUSHER PANEL HOPPER ACCESS LADDER 2 - YEAR CYLINDER WARRANTY 1 - YEAR BODY WARRANTY 1 - YEAR HYDRAULIC WARRANTY IN BOUND SHIPPING COST	RH DRIVE (2) ON CURBSIDE TEM - 2 ANDARD) N CAB	4	5,000.00	20,000.00
Thank you for your b	usiness.		Subtota	ıl	
			Sales T	ax (8.25%)	
			Total		

Signature

Phone #	559-233-3277	Fax#	559-233-9844	E-mail	info@ruckstell.com
<u> </u>	1	<u> </u>		<u></u>	<u> </u>

RUCKSTELL

CALIFORNIA SALES CO., INC. P.O. Box 12543 Fresno, CA 93778

Estimate

Date	Estimate #
8/13/2019	03431

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1,	V/111	- 1	M	œ	1655

City of Merced 678 W. 18th Merced, CA 95340

Phone #

559-233-3277

		Rep	Requested by:	FOB	P.O. No.
		EI	WALLY	FRESNO	
Item	Description		Qty	Cost	Total
	SOURCE WELL CONTRACT # 112014-NWY SOURCE WELL MEMBER # 2325				
Thank you for your bu	isiness.		Subtota		\$1,072,647.44
Valid for 20 days from date of estimate. This estimate is not a contract or a bi we would expect the total price to complete the work stated above, based upor		pon our initial	t Sales Ta	x (8.25%)	\$86,843.41
nspection. If addition	nal parts and/or labor are required, we will inform you ork. A signed estimate is required prior to beginning	form you prior to		\$1,159,490.85	

559-233-9844	E-mail	info@ruckstell.com

Fax#

Signature



Hicial

City of Merced, California

Member # 2,325

This certificate entitles the entity named above the opportunity to puchase off of nationally, competitively bid contracts. The entity will save time by using pre-bid contracts, save money by leveraged volume pricing and obtain quality products from nationally acclaimed vendors.

Duff Erholtz, Membership Manager

Competitively Bid National Cooperative Contract Solutions



June 6, 2018

The National Joint Powers Alliance (NJPA) will formally be known as Sourcewell beginning June 6, 2018.

The NJPA Board of Directors on May 15, 2018 voted to approve changing the organization's name to Sourcewell. Documentation has been formally submitted for Sourcewell to be registered and trademarked, both federally and in Minnesota, with the appropriate agencies.

Sourcewell has worked intentionally to mitigate the implications of this change to current and potential members, currently awarded vendors, and other existing partners. After June 6th, 2018, Sourcewell will maintain and continue to recognize the National Joint Powers Alliance name. Membership agreements, contracts, and agreements entered into with the National Joint Powers Alliance will remain valid and continue in effect without impact. This will ensure contractual continuity and safeguard any disruptions to engagement with Sourcewell. This includes membership, use of cooperative purchasing contracts, or other contractual engagements.

Marcus Miller

Sincerely

General Counsel and Director of Government Relations

STATE OF MINNESOTA COUNTY OF TODD

RESOLUTION ESTABLISHING CORPORATE AND AGENCY NAME FOR REGION 5 SERVICE COOPERATIVE AS SOURCEWELL (F/K/A National Joint Powers Alliance)

Resolution No. 2018-07

WHEREAS, the Board of Directors previously authorized and directed staff undertake all actions necessary and sufficient to "rebrand" Region 5 Service Cooperative; and

WHEREAS, after careful study and consideration, the name Sourcewell was chosen as the legal, organizational, and agency name for Region 5 Service Cooperative; and

WHEREAS, the organizational bylaws were duly adopted, ratified and approved and became effective as of the May 2018 Board of Directors meeting; and

WHEREAS, Article 1, Section 1 of said bylaws establishes Sourcewell as the legal organizational name for Region 5 Service Cooperative; and

WHEREAS, Minnesota Statutes, § 123A.21 provides that the "care, management, and control" of Region 5 Service Cooperative is vested in its Board of Directors, including the power and authority to establish the legal name of the organization.

NOW THEREFORE BE IT RESOLVED by the Board of Directors as follows:

- 1. The name National Joint Powers Alliance is replaced and the legal, organizational, and agency name of Region 5 Service Cooperative is Sourcewell.
- 2. The official and effective date of this change is June 6, 2018.
- 3. All prior contracts and other legal obligations established or incurred under the name National Joint Powers Alliance remain in full force and effect.
- 4. All contracts or other legal obligations undertaken on and after June 6, 2018 shall be executed and performed in the name Sourcewell.
- This Resolution is effective upon signature and shall henceforth serve as sufficient and official proof and evidence of the legal, organizational and agency name for Region 5 Service Cooperative.

6.	The Executive Director, or his designee, is authorized and directed to provide
	copies of this resolution to third parties as requested or required and to affix the
	same to legal documents when necessary.

Chairperson, Sourcewell Board of Directors

ATTEST:

Clerk to the Board of Directors



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.12. Meeting Date: 9/3/2019

Report Prepared by: Bill Osmer, Public Works Manager - Water Quality Control

SUBJECT: Adoption of Motion Receiving and Filing the Biennial Audit of the Sewer System Management Plan as Required by the State Water Resources Control Board

REPORT IN BRIEF

Considers the filing of the biennial audit of the Sewer System Management Plan.

RECOMMENDATION

City Council - Adopt a motion receiving and filing the biennial audit of the Sewer System Management Plan as required by the State Water Resources Control Board.

DISCUSSION

The State Water Resources Control Board (SWRCB) issued General Order Number 2006-0003-DWQ (hereby called General Order) requiring all federal and state agencies, municipalities, districts, and other public entities (hereby called Enrollees) that own or operate a sanitary sewer system to develop a Sewer System Management Plan (SSMP), and to perform periodic internal audits of said SSMP. The General Order also requires Enrollees to establish a communication system to "provide the public the opportunity to provide input to the Enrollee as the program is developed and implemented". (General Order Section D. Provisions, 13. SSMP, (xi) Communication Program).

To meet the audit requirement, the Public Works Sewer Division has performed a biennial audit for fiscal years 2017/2018 and 2018/2019. To meet the communication program requirement, the Public Works Sewer Division is presenting the biennial audit to Council for their information, and will post the SSMP audit to the City of Merced website.

ATTACHMENTS

1. SSMP Audit: 2017/2018 and 2018/2019

City of Merced



City of Merced Sewer System Management Plan

2017-18 & 2018-19 SSMP Audit

June 30, 2019

City of Merced 2018 - 2019 SSMP AUDIT

Table of Contents

Section	Page
List of Abbreviations	2
1. Introduction	3
2. Regulatory Requirements for SSMP Audits	3
3. 2018 -2019 SSMP Audit	3
4. SSMP Effectiveness	7
5. SSMP Compliance	8
Appendix A: 2018-2019 SSMP Audit	

Appendices

Appendix A: 2018-2019 SSMP Audit Checklist

List of Abbreviations

COM City of Merced

FY Fiscal Year

GWDR General Waste Discharge Requirement

RWQCB Regional Water Quality Control Board

SSMP Sewer System Management Plan

SSO Sanitary Sewer Overflow

SWRCB State Water Resources Control Board

1. Introduction

The intent of the audit is to determine whether the SSMP complies with Region 5 and State GWDR requirements. The SSMP reflects current City practices, and is effective in reducing SSOs. The review fulfills the SSMP Audit requirements of the SWRCB GWDR for FY 2017-2018 & 2018-2019. The Annual audits will be kept on file at the City for five years.

2. Regulatory Requirements for SSMP Audits

The summarized requirements for SSMP Audits element of the SSMP are:

SWRCB Requirement:

As part of the SSMP, the City shall conduct periodic internal audits, appropriate to the size of its system and the number of SSOs. At a minimum, these audits must occur every two years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the City's compliance with the SSMP requirements, including identification of any deficiencies in the SSMP and steps to correct them.

3. 2018 - 2019 SSMP Audit

The City conducts a biennial audit of its SSMP. The goal of the audit is to determine whether the SSMP complies with current requirements of the GWDR, reflects current practices, and the SSMP's effectiveness in reducing SSOs.

Program effectiveness is evaluated by a review of performance indicators and discussion of SSMP and sewer system improvements.

Program compliance is evaluated by review of SSMP elements using the Audit Checklist. The Audit Checklist includes comments regarding recently completed program updates and recommendations for future actions.

4. SSMP Effectiveness

Performance

Performance indicators, collected as part of Element IX (Monitoring, Measurement, and Program Modifications) have been reviewed to identify patterns and trouble areas needing improvement. Performance indicators for 2018 and 2019 are summarized in Table 1.

Program and System Improvements

This report describes the City of Merced's SSMP program audits and its associated tasks. This SSMP audit is being performed to:

- Evaluate the effectiveness of the current SSMP program
- Identify potential weaknesses of the current SSMP program

• Determine improvement opportunities for modifying the current SSMP program

WDR Requirements for SSMP Element 10: SSMP Program Audits

As part of the SSMP, the Enrollee shall conduct periodic internal audits, appropriate to the size of the system and the number of SSOs. At a minimum, these audits must occur every two years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the Enrollee's compliance with the SSMP requirements identified in this subsection (D.13), including identification of any deficiencies in the SSMP and steps to correct them.

The City of Merced's Compliance Approach – As Stated in the SSMP

The City will produce internal audits every two years to determine the effectiveness of the SSMP elements and programs. The program audit will include a review of relevant data and trends maintained part of the SSMP Monitoring and Measurements Program to determine opportunities to improve compliance with the SSMP requirements. A prioritized list of improvement opportunities will be updated as part of the audit program. Improvement Opportunities will be used to prioritize and develop program modifications and will be initiated based on priority and available funding. An overview of SSMP related work completed between audits will be included in the program audit.

The program audit will include a final report reviewing the City of Merced's performance and identifying findings. The report will be posted on the City's website and will be kept on file.

The City of Merced Sewer Collection System Description and Performance

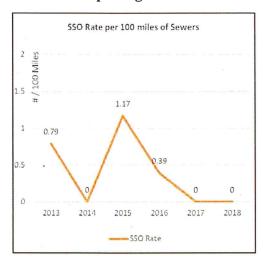
The City of Merced's Sewer Collection System, including trunk sewers consists of approximately 267 miles of gravity sewers ranging from 6 inches to 48 inches in diameter and approximately 12.7 miles of force mains ranging from 4 inches to 27 inches in diameter. The conveyance system also consists of 20 pump stations, flow meters, and valve vaults. From July 2017 through June 2019, the City of Merced's Sewer Collection System has had a total of one (1) SSO.

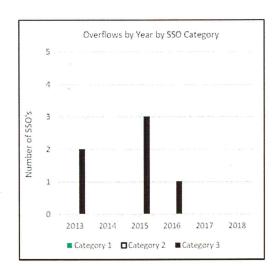
Reported to the California Integrated Water Quality System (CIWQS) as detailed in Table 1.

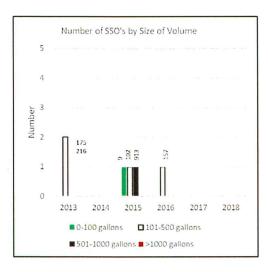
Table 1: CIWQS Summary of Merced's SSOs FY 2017-2018 & 2018-2019

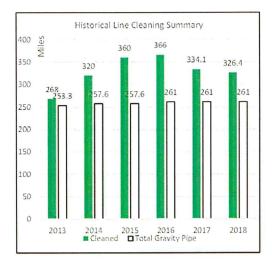
SSO	Start	SSO Address	SSO	Volume	Volume Reached	SSO
Cat	Date		Volume	Recovered	Surface Water	Cause
3	01/21/19	822 Joyce Ave.	417	417	0	Baby Wipes

Performance Reporting









Considered the relatively low number of SSO's compared to the miles of sewer mains in Merced's sewer collection system, the following audit program has been developed for the system.

Audit Tasks

- 1. Compare SSMP with current operation and maintenance activities and priorities, and update or amend accordingly.
- 2. Review operation and maintenance philosophy/strategy with Sewer Collection and Maintenance field staff.
- 3. Review maintenance records to ensure that a match exists between operation and maintenance philosophy/strategy and everyday practice.
- 4. Review condition assessment/rehabilitation philosophy/strategy with Utilities Engineering Section, and ensure that the condition assessment/rehabilitation schedule is current and relevant.
- 5. Record all findings during the audit process on the attached SSMP Audit Form. This form will be the final audit report for the City of Merced's Sewer Collection System's performance and improvement opportunities. The report will be kept on file and made available to the public either as a reference or posting on the City's website.

Conclusion

The City of Merced's existing SSMP elements and programs, after being updated are effective for its type of collection system.

With one SSO event in 2018-2019 the City's performance is favorable when compared to other districts with similar size collection systems. The volume of Merced's SSOs, both average per event and total volume spilled is on par or better than other districts in Region 5.

Merced's SSO was attributed to baby wipes being disposed in a 8" main line from a nearby residential area. Collection personnel canvassed the neighborhood and spoke to residents about the negative effects that result from the flushing of wipes. To address aging infrastructure, offsets and root intrusion, the City has an ongoing program for replacement or repair of any deteriorating mains discovered during main inspection and televising. The City also aggressively monitors, cleans and chemically treats for roots in any mains located in easements as well as any mains with a history of root intrusion. This program has been in place since 2007, and will continue indefinitely.

The City has an ongoing main line replacement program, where damaged or deteriorated mains are replaced or repaired as they are discovered.

The SSMP and the City's operation and maintenance strategies are essential elements used to manage, operate, and maintain all parts of the sewer collection system, and are continually being evaluated and improved upon.

Improvement Opportunities

The following improvement opportunities have been identified based on this audit.

SSMP Section	Updates	Date Updated
Goals	No changes, chapter still relevant to organization's mission.	June 2015
Organization	Updated contact info, assignments and org chart due to Department recent staffing changes and hires.	May 2019
Legal Authority	No changes, chapter still relevant to organization's mission.	June 2015
Operation & Maintenance	Updated Staffing, Vehicles, Certification Info, High Frequency Main Cleaning schedule.	May 2019
Design & Performance Provisions	No changes, chapter still relevant to organization's mission.	June 2015
Overflow Emergency Response Plan	Updated our contact info.	October 2018
Fats, Oils, & Grease (FOG) Control Program	No changes, chapter still relevant to organization's mission.	June 2015
System Evaluation & Capacity Assurance Plan	No changes, chapter still relevant to organization's mission.	June 2015
Monitoring, Measurement & Program Modifications	SSO info, table, staffing and resources.	June 2015
SSMP Program Audits	Included Calendar Year June 2017 SSMP Bi-Annual Audit.	June 2017

	City of Merced's Website (http://www.cityofmerced.org)	June
Communication Program	Sewer bills and City Council Meetings	2015

5. SSMP Compliance

The Audit Checklist is used to demonstrate the City's compliance with Region 5 and State GWDR requirements for sanitary sewer systems. The audit checklist indicates whether each SSMP element is compliant, describes recent revisions or updates and recommends future actions to maintain effective SSMP elements that reflect current City practices. The Audit Checklist, completed for June 2018-2019, is included in **Appendix A**.

CITY	OF Merced 2018 - 2019 SSMP AUD	IT
	Appendix A: 2018-2019 SSMP Audit C	Checklist

Element	Title	Requirement	Compliant	Current	Comments
I	Goals	Reduce, prevent, and mitigate SSOs	Υ	Y	No changes, chapter still relevant to organization mission.
II	Organization	Designate Legally Responsible Official (LRO)	Y	Υ	No changes.
		Organization Chart	Y	Y	Updated to reflect 2018/2019 staff changes.
		Names and phone numbers for key personnel	Υ	Υ	Updated to reflect 2018/2019 staff changes.
		Chain of communication for reporting SSOs	Y	Y	Updated to reflect 2018/2019 staff changes
III	Legal Authority	Prevent illicit discharges to sanitary sewer system	Y	Υ	No changes recommended.
		Require sewers and connection be properly designed and constructed	Y	Y	No changes recommended.
		Ensure access for inspection, maintenance, and repairs	Y	Υ	No changes recommended.
		Limit discharge of FOG and debris that may cause blockages	Y	Υ	No changes recommended.
		Ability to inspect FOG producing facilities	Υ	Υ	No changes recommended.
IV	O&M Program	Maintain critical spare part inventory	Υ	Υ	No changes recommended.
		Maintain up-to-date maps of the sanitary sewer system	Y	Υ	Electronics Maps are continually updated.
		Adequate planning, resources and budget to support effective sewer system management and long term goals	Y	Y	No changes recommended.
		Describe routine preventive maintenance program	Y	Y	Updated with current PM schedules.
		Document completed preventive maintenance	Υ	Υ	No changes recommended.

Element	Title	Requirement	Compliant	Current	Comments
IV	O&M Program (cont'd)	Adequate I/I monitoring	Υ	Υ	No changes recommended.
		Rehabilitation and replacement plan that identifies and prioritizes sanitary sewer system defects	Y	Y	Defects are repaired when discovered.
500		Provide regular technical training for sewer system staff	Υ	Y	Collections Crew attend CWEA and other training regularly.
		Maintain equipment inventory	Y	Υ	No changes recommended.
V	Design and Performance Provisions	Design and construction standards for new sanitary sewer system facilities	Υ	Υ	Currently being updated.
,		Design and construction standards for repair and rehabilitation of existing sanitary sewer system facilities	Y	Υ	Currently being updated.
		Procedures for the inspection and acceptance of new sanitary sewer system facilities	Y	Y	Updated with current PW Standard Specs for Sewer Mains.
		Procedures for the inspection and acceptance of repaired and rehabilitated sanitary sewer system facilities	Y	Y	Updated with current PW Standard Specs for Sewer Mains.
VI	Overflow Emergency Response Plan (OERP)	Program to minimize or correct the impacts of any SSOs that occur.	Y	Y	No changes recommended.
		Program to prevent the discharge of sewage to surface waters		A circulate system of the country of absorption by the country described the second of country and the country of the country of the country described the country of the country of the country described the country of the country o	No changes recommended.

Element	Title	Requirement	Compliant	Current	Comments
VI .	O.E.R.P (Cont'd)	Procedures for the notification of primary responders	Y	Υ	Updated with new City of Merced SSO SOP, SSO determination flow charts, notification information, & Reporting Procedures.
		Procedures for the notification of regulatory agencies	Υ	Υ	All call-out lists are updated and distributed to City departments.
		Program to ensure appropriate response to all SSOs	Y	Y	Updated with new City of Merced SSO SOP, SSO determination flow charts, notification information, & Reporting Procedures.
		Proper reporting of all SSOs	Y	Y	Updated with new City of Merced SSO SOP, SSO determination flow charts, notification information & Reporting Procedures.
		Procedure to ensure City collection staff are aware of and follow OERP	Y	Υ	New SSO SOP distributed to all staff, reviewed periodically and updated as required.
		Procedure to ensure City collection staff are trained in the OERP procedures	Y	Υ	New SSO SOP distributed to all staff, reviewed periodically and updated as required.
		Procedures to address emergency operations such as traffic and crowd control	Y	Y	All employees have been trained in Traffic Control / Flagger, new employees are trained when hired.
VII	FOG Control Program	Identification of Enhanced areas with FOG problems	Y	Y	No changes recommended.
		Public outreach program that promotes the proper disposal of FOG	Y	Y	No changes recommended.
		Plan for the disposal of FOG generated within the City's service area	Y	Y	No changes recommended.

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Element	Title	Requirement	Compliant	Current	Comments
VII	FOG Control Program (cont'd)	Program of preventive maintenance for sanitary sewer system facilities that have FOG-related problems	Y	Y	Updated 2018 Sewer Enhanced Area improvement list following CCTV inspections.
and the second		Demonstrate that the City has allocated adequate resources for FOG control	Y	Υ	No changes recommended.
VIII	System Evaluation and Capacity Assurance Program (SECAP)	Identification of elements of the sanitary sewer system that experience or contribute to SSOs caused by hydraulic deficiencies	Y	Y	No changes recommended.
		Established design criteria that provide adequate capacity	Y	Y	Master Plan ensures that sewer system capacity is adequate to serve future development.
		Short term CIP that addressed known hydraulic deficiencies	Υ	Υ	No changes recommended.
		Long term CIP that provides for future capacity needs	Y	Υ	Currently being addressed in Sewer Master Plan.
		Procedures that provide for the analysis, evaluation, and prioritization of hydraulic deficiencies.	Υ	Y	No changes recommended.
		The short and long term CIPs include schedules for the correction of each identified hydraulic deficiency.	Y	Y	No changes recommended.

Element	Title	Requirement	Compliant	Current	Comments
IX	Monitoring, Measurement, and Program Modifications (MMPM)	Maintain relevant information to establish, evaluate, and prioritize SSMP activities	Y		No changes recommended.
		Monitor implementation of the SSMP	Y	Y	No changes recommended.
	Measure, where appropriate, performance of the elements of the SSMP	Υ	Y	No changes recommended.	
		Assess success of the preventive maintenance program	Y	Υ	No changes recommended.
		Update SSMP program elements based on monitoring or performance	Y	Υ	No changes recommended.
		Identify and illustrate SSO trends	Υ	Y	No changes recommended.
X	SSMP Program Audits	Conduct periodic audits	Υ	Υ	Audits are performed biennial.
	,	Record results of the audit in a report	Y	Υ	Audits are performed biennial.
ė		Record changes made and/or corrective actions taken	Y	Y	Audits are performed biennial.
XI	Communications Program	Communicate with the public regarding the preparation of the SSMP	Y	Υ	No changes recommended
		Communicate with the public regarding SSMP performance	Y	Y	No changes recommended

Signature Bul Course Date 7-29-19



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item I.1. Meeting Date: 9/3/2019

Report Prepared by: Michael Hren, Principal Planner, Planning Division

SUBJECT: Public Hearing Regarding Appeal of Planning Commission Approval of Commercial Cannabis Business Permit #18-14R Filed by Jiva Life, LLC

REPORT IN BRIEF

Request by Jiva Life, LLC. to appeal and reverse the Planning Commission's approval of Commercial Cannabis Business Permit (CCBP) #18-14R for Harvest of Merced.

RECOMMENDATION

City Council - Adopt a motion:

A. Option A - To affirm the Planning Commission's approval of CCBP #18-14R:

Adopting Resolution 2019- , a Resolution of the City Council of the City of Merced, California, granting commercial cannabis business permit #18-14R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services, at 863 W. 15th Street, and making certain findings in connection therewith; or,

B. Option B - To reverse the Planning Commission's approval of CCBP #18-14R:

Adopting **Resolution 2019-**___, a Resolution of the City Council of the City of Merced, California, denying commercial cannabis business permit #18-14R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services, at 863 W. 15th Street, and making certain findings in connection therewith.

ALTERNATIVES

- 1. Allow the permit, denying the appeal and affirming the action of the Planning Commission; or,
- 2. Deny the permit; approving the appeal and reversing the action of the Planning Commission; or,
- 3. Continue to a future City Council meeting (date and time to be specified in the motion).

AUTHORITY

City of Merced Ordinance #2498/Merced Municipal Code Section 20.44.170 regulates Commercial Cannabis Business Permits in the City.

DISCUSSION

History

This appeal relates to the approval of an application for a permit to utilize the property at 863 W. 15th Street (location map for this property at Attachment 1, aerial map at Attachment 2) for cannabisrelated business activities. The permit would allow Harvest of Merced, LLC. to operate a Retail Dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services. The project proposed to use and modify an existing building, which has existing access to utilities (floor plan at Attachment 3 and photographs of the existing property at Attachment 4).

On September 18 and September 19, 2018, the Planning Commission considered and approved CCBP #18-14R at a duly noticed public hearing. That approval was appealed and the City Council reversed the approval at a duly noticed public hearing on October 25, 2018. The City Council remanded the matter back to the Planning Commission for the Planning Commission to determine. and make a finding of fact as to whether the properties located at 732 W. 13th Street (APN 031-313-012) and 760 W. 13th Street (APN 031-313-013) meet the definition of "school" per City of Merced Ordinance #2480, and whether the property located at 863 W. 15th St., identified above, is within 1.000 feet of a school.

The Planning Commission, at a duly noticed public hearing on November 14, 2018, based upon the information in the record, made a determination that both of the properties at 760 W. 13th St. and 732 W. 13th St., more commonly known as the Wolfe Education Center, met the definition of a "school" per Merced Ordinance #2480. Based on that determination, the Planning Commission determined that the property at 863 W. 15th St. is within 1,000 feet of a school. Based on those determinations, the Planning Commission voted 6-0, with one abstention, to deny Commercial Cannabis Business Permit #18-14R for Harvest of Merced.

On December 3, 2018, the City Council heard an appeal of this denial. Included in the points of the appeal was the assertion that a previously undisclosed communication had occurred between a Planning Commissioner and Mr. Tinetti, the owner of the property at 863 W. 15th Street, and that this communication made the public hearing held on November 14, 2018, unfair. At the December 3, 2018, meeting, Planning Commission Chairperson Dylina disclosed to the City Council a communication with Mr. Tinetti that he had previously failed to make known. The City Council voted to Reverse the decision of the Planning Commission and remand the matter back to the Planning Commission, for another vote on the matter to be held without Chairperson Dylina participating.

On March 4, 2019, the City Council adopted Ordinance 2498, amending Section 20.44.170 of the Merced Municipal Code which deals with cannabis regulations. 20.44.170(C).48 now clarifies that, " 'School' means those sites upon which full-time instruction in any of grades K through 12 is provided where the primary purpose is education, as determined in the sole discretion of the City Council, 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." The City's Official List of Schools (Attachment 5), includes both parcels comprising the Wolfe Education Center, 732 and 760 W. 13th Street. Because of this, the Planning Commission did not need to make a determination regarding the Wolfe Education Center's status as a school.

The subject site is required to be more than 1,000 feet from any schools and more than 600 feet from any day care centers, youth centers, libraries, or public parks that are currently in existence, as per

required by Section 11362.768 of the Health and Safety Code and Section 20.44.170(E).3.f of City of Merced Ordinance #2498 for retail cannabis businesses (Attachment 6). In order to remedy the distance issue between 863 W. 15th Street and the Wolfe Education Center, the property owner of 863 W. 15th Street submitted a Lot Line Adjustment for the property. This adjustment removed approximately 452 square feet from the proposed site of Harvest of Merced, and incorporated that area into 855 W. 15th Street, a property with the same ownership to the east.

Additionally, in accordance with the process set forth in Merced Municipal Code Section 20.44.170(L) (7), Harvest of Merced submitted a request for minor modification to their pending application for a Commercial Cannabis Business Permit (Attachment 7) reflecting the Lot Line Adjustment. The submittal includes a new site plan (Attachment 8), updates to the parking plan and trash enclosure, and a map showing that the distance between the modified 863 W. 15th Street and the Wolfe Education Center is greater than 1,000 feet. Director of Development Services McBride approved the minor modification request and staff gave Provisional Zoning Clearance based on these submittals.

At the Planning Commission meeting of June 5, 2019, a public hearing was held and the Planning Commission voted to approve Commercial Cannabis Business Permit by a vote of 5-0 with one abstention, as shown in Resolution #4021 (Attachment 9). Jiva Life, LLC. has appealed the Planning Commission's approval, and has submitted a letter to that effect (Attachment 10). Harvest of Merced has also submitted a reply to the appeal (Attachment 11).

Environmental Review #18-27 (Categorical Exemption), shown at Attachment 12, was approved at the September 19, 2018, meeting of the Planning Commission. This Environmental Review was not appealed at the City Council's October 25, 2018, meeting nor at their December 3, 2018, meeting. Therefore, no further environmental review pursuant to the California Environmental Quality Act is necessary.

City Council Action

The City Council, after conducting a public hearing, should consider one of three options as outlined in the "Recommendation" section above. Information regarding Harvest of Merced's Commercial Cannabis Business Permit application is provided below.

Project Description

The applicants (Harvest of Merced) are proposing to operate a cannabis dispensary business for medicinal and adult-use cannabis and cannabis-related products at 863 W. 15th Street. This application includes delivery services. Background checks on all owners have been performed to the satisfaction of the Chief of Police. The proposed project complies with the General Plan designation of General Commercial (CG) and the zoning designation of General Commercial (C-G) with approval of a Commercial Cannabis Business Permit.

The City Selection Committee, made up of the City Manager, Chief of Police, and Director of Development Services, ranked this application #4 of all retail sales Dispensary applications, with an average score of 95.000. The full scoring sheet for this application is at Attachment 13.

The applicants propose the operation of a retail sales dispensary for both medicinal and adult-use cannabis and cannabis-related products, including delivery services. Approximately 444 square feet of the building is proposed as the sales area, with another 192 square feet for the lobby. These areas comprise the total of space that would be accessible by members of the public. The remainder of the building is for "back-of-the-house" purposes such as storage and delivery.

As the project is proposed in an existing building with existing access to the City's roadway infrastructure, and due to the conformity with the zoning for the site, no concerns related to traffic or circulation have been raised as a result of this project.

The site plan proposes 11 parking spaces adjacent to 863 W. 15th Street, with one (1) of those being an ADA-compliant space. The 1,800-square-foot building, using the general retail requirements for portions accessible to the public and the warehousing requirements for the portions inaccessible to the public, would require three spaces. The City's Zoning Code requires one space per 300 square feet for general retail, using a 15% reduction in usable space for hallways and other "non-public" spaces, and one space per 2,000 square feet for warehousing. Therefore, the proposal meets and exceeds the City's parking requirements.

The proposed property is surrounded by industrial and commercial uses to the west, north, and east. To the south of the property, across 15th Street, are single-family residences approximately 81 feet away from property line to property line. The project proposes significant upgrades to the property, including robust security; a building that has been vacant for some time represents a potential risk for illegal activities. The project would also improve the parking lot and improve the appearance of the building.

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 including, but not limited to, banners and A-frames, nor window signs are allowed. The details of final elevations and signage shall be approved by Planning staff prior to issuance of a Certificate of Occupancy. Example renderings of the interior of the facility have been provided at Attachment 14; these are illustrative and final details will need to be approved by Building staff.

Safety/Security

The applicants' security plan includes the following provisions:

- State-certified uniformed security officers during the hours of required coverage
- High visibility foot patrol at the serviced location
- Experienced field supervisors to oversee the operation of the assigned officers during the hours of required coverage
- Availability of a security consultant when necessary and/or desired by the client
- Office support for scheduling personnel and advisory needs
- Police liaisons for the serviced location(s) resulting from arrests or criminal incidents
- Carefully maintained incident reports, and other such documents or records as required by the client's individual needs

Inventory reconciliation: scheduled daily, weekly, semi-annual, and annual reconciliation of inventory with increasing intensity

- An alarm system that will include:
 - Appropriate equipment, including a centrally monitored fire and burglar alarm system, necessary to monitor activity inside and outside the facility, including:
 - All entrances and exits
 - Rooms with exterior walls or walls shared with other building tenants
 - Rooms containing cannabis and cannabis goods
 - The vault/Rooms containing the vault/The security room
 - Exterior windows
 - A panic alarm, meaning a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress
 - Automatic voice dialer
 - Motion detection devices tied to the surveillance monitoring system
 - o Failure notification system that signals the alarm-monitoring provider of any system error within a maximum of five minutes
 - A backup battery system that immediately provides power for at least twenty four (24) hours in the event of a power outage
 - o A back up alarm system that will detect unauthorized entry when no employees should be present at the Facility
 - The back up alarm system will be provided by a company supplying commercial grade equipment and not the same company supplying the primary security system.
- Access Control equipment that will, at minimum, include:
 - Biometric fingerprint and/or RFID proximity card access control devices for all access points to the dispensary facility and doors entering or exiting a limited access area
 - Backup battery system that immediately provides power for at least twenty four (24) hours in the event of a power outage
 - o Electric strike locks on all doors in the dispensary facility with the ability to override access control for emergency exit even during a power outage
 - o System that allows for programming or uploading individual user permissions and allowed entry times, as well as operations specific information including employee photos
 - System that monitors and records identification of those entering and exiting, date/time, length of time in specific area and any unauthorized access attempts
- Video surveillance cameras that will:
 - Be immobile and in permanent locations
 - o Record a minimum twenty (20) frames per second
 - Provide an image resolution of at least D1
 - Have a minimum resolution of 0.9 megapixels (1280 x 720 pixels)
 - Have infrared capabilities to capture images in low or no lighting conditions
 - o Have the ability to identify activity occurring within 20' from all points of sale and from all points of ingress/egress to the facility and limited access area
 - o Include a digital archiving device and 19"+ monitors connected to the electronic

recording security system at all times

Ownership

Harvest of Merced, LLC. consists of owners who have at least 5% interest in the proposed business. The owners are Steve White (83%), Elizabeth Stavola (5%), Edgar Contreras (5%), and Anna Blazevich (5%), who have each performed a Live Scan check and have successfully passed a background check to the satisfaction of the Chief of Police. The remaining 2% of ownership is held by a Mr. Brian Vicente. This amount of ownership does not classify Mr. Vicente as an "owner" by the standards defined in City of Merced Ordinance #2480 and thus no background check has been performed on him.

According to the application, the owners have the following relevant experience and qualifications:

Mr. Steve White founded Harvest in 2012. Beginning with a single dispensary in Tempe, Arizona, Harvest presently holds 26 licenses in seven states, with operating facilities in four of those states (Harvest's first Pennsylvania dispensary and Ohio cultivation facility are currently under construction and will be operational in 2018). In addition to overseeing medical cannabis license acquisition, facility start-up and operations, and providing guidance on organizational direction and strategy, Mr. White has also been instrumental in navigating state and county level regulatory audits, including, to date, 10 county building safety certificate of occupancy inspections, five county health department inspections, 16 state department of health services inspections, four Americans for Safe Access Patient Focused Certifications, and 14 certified financial audits.

Harvest facilities host monthly support group meetings for individuals suffering from epilepsy, chronic pain, cancer, and PTSD. Under Mr. White's direction, Harvest has also engaged in a number of community activities and events, including the donation of over \$400,000 to local charitable organizations, veterans, seniors, and patients in need. Mr. White also serves on the board of directors for Harvesting Hope, a 501(c)(3) non-profit organization dedicated to improving quality of life for young children suffering from seizure disorders. To date, Harvesting Hope has raised and distributed nearly \$30,000 and provided services for over one hundred (100) families and their children.

Ms. Beth Stavola is a female entrepreneur, Chief Operating Officer and Board Member of MPX Bioceutical Corporation, the Founder and CEO of Stavola Medical Marijuana Holdings, Health for Life Inc, GreenMart of Nevada, and CBD For Life. In 2017, Cannabis Business Executive named Ms. Stavola #3 on the "CBE 75 Most Important Women" in cannabis list. She runs a thriving cannabis business, which includes growing, processing, and dispensing operations throughout Arizona, Nevada, Maryland, and Massachusetts.

The current overall operation consists of two Dispensary licenses, two Production licenses, and four Cultivation licenses in the state of Arizona operated under the Health for Life brand; as well as three medical marijuana licenses in Las Vegas, Nevada under the GreenMart of Nevada brand. In the last year the company has expanded to Maryland managing three dispensary licenses under the Health for Life brand and one production license under MPX, as well to Massachusetts with a fully integrated grow, production, and dispensary license. Her beauty and wellness brand, CBD For Life, provides

customers with the benefits of cannabinoids while avoiding unwanted psychoactive effects and can be sold throughout the country.

Ms. Stavola has successfully established the Health for Life brand from inception to significant sales/cash flow within 5 years' time and maintains one of the most stellar compliance records in the state of Arizona, receiving a 100% score on the last several state compliance audits. Given this record, Ms. Stavola was able to establish a banking relationship for the business, which is not an easy feat in this industry. Health for Life is one of the most recognized brands of cannabis dispensary, cultivation, and processors in Arizona. Ms. Stavola is also the owner of Melting Point Extracts (MPX), which has become an extremely well-respected and sought after brand in Arizona.

Ms. Anna Blazevich has eleven years of prior experience in operating a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law with proof of payment of taxes. Ms. Blazevich successfully founded and continues to run Therapeutic Health Collective (DBA Stone Age Farmacy). Therapeutic Health Collective is a verified Mutual Benefit Non-Profit Corporation for cannabis that operates in compliance with California law and has proof of payment of taxes. In 2017, for example, the Collective paid the City of Los Angeles \$52,648 in taxes. Therapeutic Health Collective has created 35 jobs in Gardena, California. While the brand began as a verified Mutual Benefit Non-Profit Corporation, it has blossomed into three stores serving both medical patients and recreation customers in two different states.

As a licensed dispensary owner in California and Oregon, Ms. Blazevich has a decade of experience in regulatory cannabis compliance. The Collective is vertically integrated, meaning it grows the cannabis products it sells. This capability translates into improved pricing for patients and customers while retaining maximum quality. Additionally, being vertically integrated allows for more control throughout the supply chain, which further supports a professional product selection and shelf stock for the consumer. This business resiliency and impeccable compliance standards will be transferred to the Harvest dispensary.

Mr. Edgar Contreras, a native of Merced, California, has extensive managerial experience with local Merced retail businesses, totaling over three years. He will also serve as the dispensary's Neighborhood Liaison. Mr. Contreras graduated from Merced High School in 1995. After graduating, Mr. Contreras began working at Sweet River Saloon as a dishwasher. Through personal drive and ambition, he was promoted to kitchen manager within a year, managing a staff of twenty people for over four years, where he was responsible for a myriad of supervision duties, including staff scheduling, inventory tracking, and quality control. Mr. Contreras subsequently served as manager of a Dollar Tree retail store, where he was responsible for shipping and receiving goods, customer service, staff scheduling, inventory tracking, and product stocking, all while managing eleven staff members for over two years. He successfully streamlined services to make the business more profitable, resilient, and customer focused.

A passionate advocate for the City of Merced, Mr. Contreras remains an active member of the local community. Mr. Contreras volunteers his time as a high school coach for basketball, football, baseball, and soccer at El Capitan High School. He has a special affinity for mentoring students. He regularly encourages young athletes to believe in their potential, give back to the community, and avoid destructive habits like substance abuse. He will play an integral role in Harvest's drug

prevention for youth program.

Community Benefits

The Harvest of Merced, LLC. application indicates the following benefits to the community should their application be approved:

- Commitment to set aside at least three percent of yearly net profits for monetary contributions to local charitable organizations.
- Merced County Food Bank- At least \$10,000 per year
- United Way of Merced County- At least \$10,000 per year
- Boys & Girls Club of Merced County- At least \$2,500 per year
- Challenged Family Resource Center and Golden Valley Health Center- At least \$2,500 per
- Pledged to chaperone the Challenged Family Resource Center's annual formal dance for developmentally disabled children.
- Harvest plans to host free bicycle and wheelchair repair clinics in the spring, summer, and fall months. Harvest will set up temporary wheelchair and bike stands where Harvest employees can perform free tune-ups and replace simple bicycle parts such as tires, tubes, chains, and brake cables. Harvest will operate these services by receiving donations and purchasing parts at-cost from participating local suppliers. Harvest will also have a volunteer sign up document for employees and consumers to commit to help at the clinics. Harvest consumers may volunteer their time making repairs at our temporary wheel and bike stands, which will count toward Harvest's Consumer Volunteer Discount initiative.
- Customer Volunteer Discount initiative in order to encourage Harvest consumers to give back to their local Merced community. This program will offer a range of discounts on final purchases of cannabis goods to patients and consumers who regularly volunteer at local charitable organizations. Harvest will create a simple form that customers and patients may pick up from the retail facility that will track their volunteer time and include a place for the charitable organization's supervisor to confirm any completed volunteer hours. For the discount, Harvest consumers are not required to complete all of their volunteer hours at one charitable organization. For every five volunteer hours Harvest customers complete and record, the customer will receive a 10% discount on their next two purchases. If a Harvest customer completes ten or more volunteer hours in a month, the Harvest customer will receive a 20% discount on all purchases made for the rest of the month in which the hours were completed. Harvest will never give away cannabis or cannabis goods for free.
- Harvest will offer a 20% discount on final purchases to any customers with a veteran designation as part of our Merced facility's initiative to Heal Our Heroes. As part of this program, Harvest will help customers understand the potential benefits and effects of using cannabis to treat wounds of war like Post Traumatic Stress Disorder (PTSD) and Chronic Traumatic Encephalopathy (CTE). To promote Healing Our Heroes and support California veterans, Harvest will advertise this initiative with local chapters of the American Legion, Veterans of Foreign Wars (VFW), Disabled American Veterans Charity, California National Guard Association, and other active veteran service organizations.
- Harvest's Merced facility will implement the Merced Cares initiative, offering a 20% discount on final purchases to medical patients who are low income. To qualify for the Merced Cares

program, patients will be asked to show proof of eligibility in either CalFresh, Medi-Cal, or other comparable qualified assistance program. The State of California recognizes that medical cannabis can provide relief that is, unfortunately, not covered by health insurance as medical cannabis falls outside the traditional healthcare system. This leaves many low-income families scrambling to pay for medicine and pain relief that can alleviate their or a loved one's suffering. Harvest believes no patient or family should be denied access to medicine simply because they cannot afford it.

- Harvest wants the citizens of Merced to know that the unlawful use of cannabis has severe consequences. Although recreational cannabis is legal in the State of California, there are still current penalties for recreational use under the age of twenty-one and medical use without a prescription. To bring awareness of the penalties for unlawful use of cannabis, Harvest would like to partner with the City of Merced Police Department and the Merced County Sheriff's Department to hold community discussions. Harvest would also like to invite local elected officials to participate and let the local police departments set the agenda.
- During these community discussions, Harvest will solicit feedback from the community. Community feedback is essential to understanding the best way to reach our neighbors. There is a lot of misinformation about the use of cannabis and the consequences of unlawful use. Harvest will promote these community discussions through traditional media and social media. In order to drive attendance to these important events, Harvest will encourage the City of Merced Police Department, the Merced County Sheriff's Department, and local elected officials to promote the community discussions.
- Harvest hopes to hold these community discussions at a school, so that the youth can have access to this important information. Harvest is prepared and working to facilitate and sponsor that event. These events would be incredibly productive because social media makes students especially vulnerable to misinformation about cannabis and drug use.

Modification to Operations

Ordinance #2498 sets forth the process in the City's Municipal Code by which a permitted cannabis business may amend aspects of its operations as pertains to the Commercial Cannabis Business License. Section 20.44.170(L)(7) of the Municipal Code lays out the details of this process. Harvest of Merced submitted an application in accordance with these regulations to modify the site plan in accordance with the Lot Line Adjustment submitted by the property owner (see "History" above for more details).

Environmental Clearance

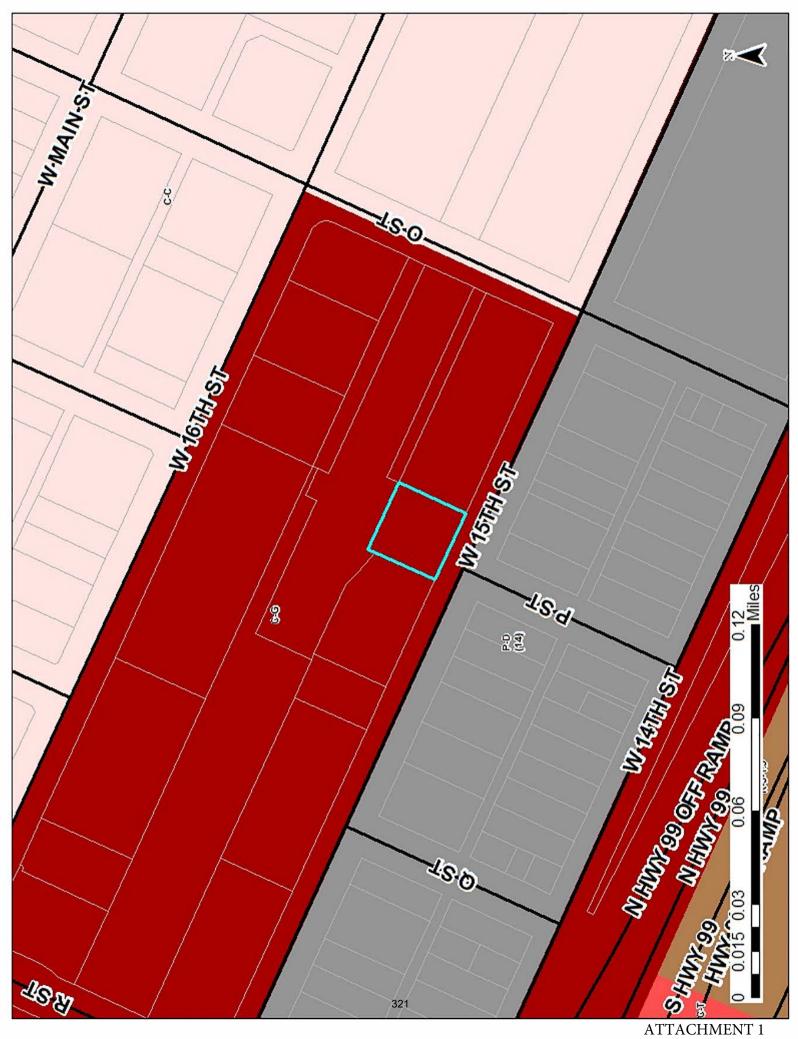
Environmental Review #18-27 (see Attachment 11) was performed in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) was approved as a result of the September 19, 2018, meeting of the Planning Commission, which was not appealed at the October 25, 2018, meeting of the City Council nor at any other public meeting held by the City of Merced. Therefore, no further action on the Environmental Review is required.

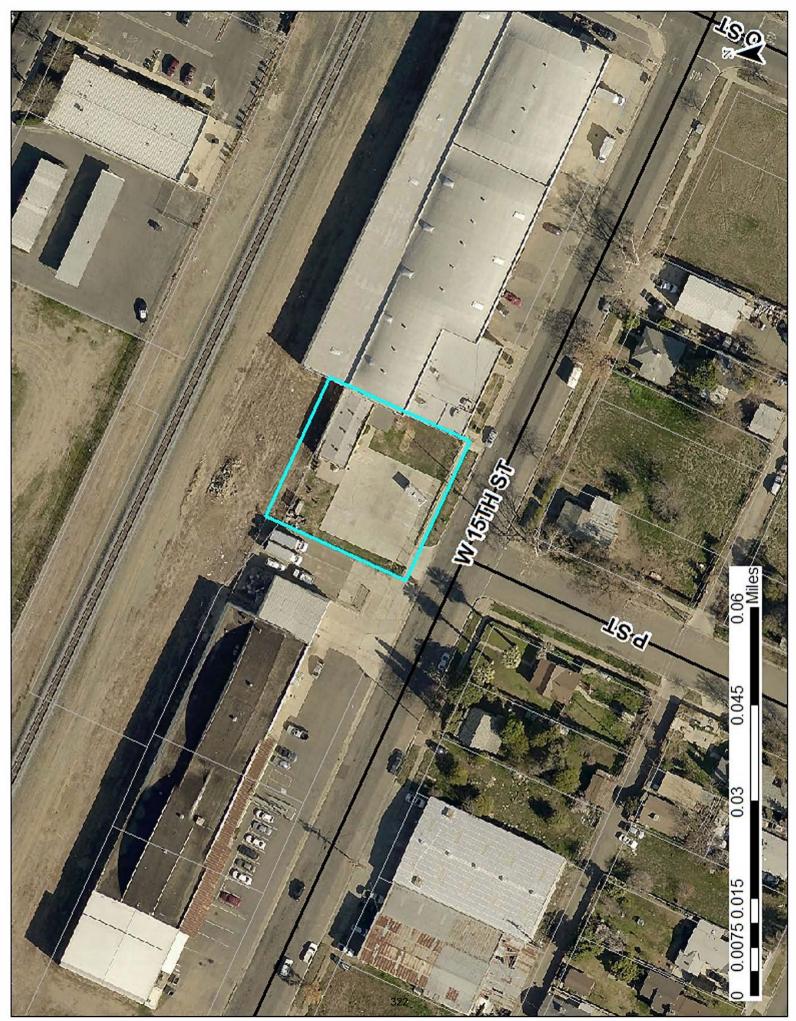
IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

- 1. Location Map
- 2. Aerial Map
- 3. Floor Plan
- 4. Photographs of Subject Site
- 5. City of Merced Official List of Schools
- 6. Ordinance #2498
- 7. Harvest of Merced Request for Modification of Application
- 8. Updated Site Plan
- 9. Planning Commission Resolution #4021 Approving CCBP #18-14R
- 10. Jiva Life, LLC's Appeal of Planning Commission Approval of CCBP #18-14R
- 11. Harvest of Merced, LLC's reply to Appeal by Jiva Life of CCBP #18-14R
- 12. Environmental Review #18-27
- 13. Merit-Based Scoring Sheet
- 14. Renderings of Example Buildout
- 15. Resolution 2019-__ Affirming the Planning Commission's approval of CCBP #18-14R
- 16. Resolution 2019- Reversing the Planning Commission's approval of CCBP #18-14R
- 17. Staff Presentation

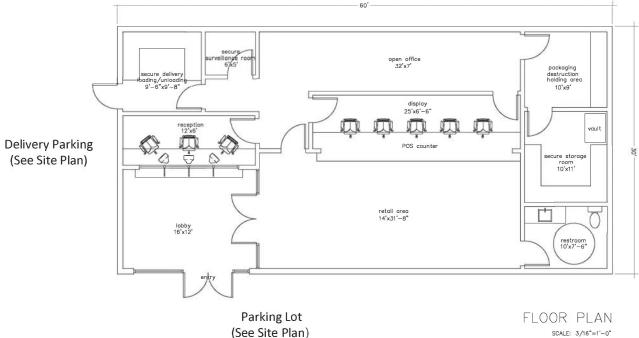




ATTACHMENT 2



Harvest of Merced Floor Plan



863 W 15th Street Merced, CA 95340

Parcel Number: 031173012000

















LIST OF SCHOOLS

SCHOOL NAME	ADDRESS	APN
ADA GIVENS ELEMENTARY	2900 GREEN ST	033-050-009
ALICIA REYES ELEMENTARY	123 S N ST	059-240-078
CHARLES WRIGHT ELEMENTARY	900 E 20TH ST	034-171-001
CRUICKSHANK MIDDLE	601 MERCY AVE	231-010-005
DANIELSON HEAD START	1235 N ST	031-313-019
DON STOWELL ELEMENTARY	251 E 11TH ST	035-033-013
DONN B. CHENOWETH ELEMENTARY SCHOOL	3200 PARSONS AVE	008-020-001
EAST CAMPUS EDUCATIONAL CENTER & INDEPENDENCE HIGH	1900 G ST	034-130-001
EL CAPITAN HIGH	100 FARMLAND AVE	052-230-087
FAITH CHRISTIAN	1233 PARSONS AVE	035-150-058
FARMDALE ELEMENTARY SCHOOL	201 E MISSION AVE	259-130-019
GOLDEN VALLEY HIGH	2121 E CHILDS AVE	061-080-046
GRACE BISHOP	2025 E SANTA FE	033-160-009
HARVEST CHRISTIAN	161 E 16TH ST	034-204-004
HOOVER MIDDLE	800 E 26TH ST	033-120-002
INDEPENDENT STUDY SCHOOL	350 W YOSEMITE	236-010-012
JOHN C. FREMONT ELEMENTARY SCHOOL	1120 W 22ND ST	030-241-001
JOHN MUIR ELEMENTARY	300 W 26TH ST	030-111-001
LEONTINE GRACEY ELEMENTARY	945 WEST AVE	059-510-040
LUTHER BURBANK ELEMENTARY	609 E ALEXANDER AVE	007-050-002
MERCED CHRISTIAN	3312 G ST	006-080-013
MERCED HIGH	205 W OLIVE AVE	236-180-011
OUR LADY OF MERCY SCHOOL	1400 E 27TH ST	033-120-030
PETERSON ELEMENTARY	848 E DONNA DR	006-333-021
PIONEER ELEMENTARY	2950 E GERARD AVE	061-250-067
RUDOLPH RIVERA MIDDLE & ELEMENTARY	945 BUENA VISTA DR	236-010-009
SHEEHY ELEMENTARY	1240 W 6TH ST	032-170-009
SPECIAL EDUCATION DOWNTOWN TRANSITION CENTER	333 W 18TH ST	031-072-012
ST. PAUL LUTHERAN	2916 N MCKEE	008-130-067
TENAYA MIDDLE	760 W 8TH ST 1	032-144-001
TENAYA MIDDLE	760 W 8TH ST	032-142-001
TENAYA MIDDLE	760 W 7TH ST	032-201-001
TENAYA MIDDLE	760 W 6TH ST	032-202-001
TENAYA MIDDLE	760 W 7TH ST 1	032-203-001
TENAYA MIDDLE	760 W 6TH ST 1	032-204-001
VALLEY COMMUNITY SCHOOL	1850 WARDROBE AVE	059-300-007
WEAVER MIDDLE	3076 E CHILDS AVE	061-340-002
WOLFE EDUCATION CENTER	732 W 13TH ST	031-313-012
WOLFE EDUCATION CENTER	760 W 13TH ST	031-313-013

ORDINANCE NO. 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

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
	Land Use Classification [4][5]				C-N Zone		I-H Zone	Specific Use Standards
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	Р	. Р Р	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	Р	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:
- The cannabis cultivation area shall be a. 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-ofway, 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 CO2, 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, as determined in the sole discretion of the City Council, 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.
- A felony or misdemeanor offense that iv. substantially relate to the qualifications, functions, or duties of the business or profession.
- A felony conviction involving fraud, deceit, v. 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.

- The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.
- 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 600foot 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 31st 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.
- 1. 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.
- The Director of Development Services or iv. 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 **Oualified 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.

- 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.
- 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 shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. 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.
- 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-shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. 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 shall be a de novo review. At the conclusion of the hearing, the City Council will make its own determination to grant or deny the permit. 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.

- Each and every violation of this Section shall 3. 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 _4th_ day of _March_____, 2019, and was passed and adopted at a regular meeting of said City Council held on the _18th day of _March_____, 2019, by the following called vote:

AYES: 7 Council Members: BLAKE, ECHEVARRIA, MARTINEZ, MCLEOD, MURPHY, SERRATTO, SHELTON

NOES: 0 Council Members: NONE

ABSTAIN: 0 Council Members: NONE

ABSENT: 0 Council Members: NONE

APPROVED:

Mayor

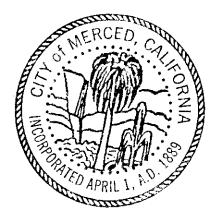
ATTEST:

STEVE CARRIGAN, CITY CLERK

BY:

Assistant/Deputy City Clerk

(SEAL)



APPROVED AS TO FORM:

City Attorney

Date

HARVEST

Mr. Michael Hren,

Harvest of Merced, LLC., hereby requests an amendment to its Commercial Cannabis Business Permit ("CCBP") #18-14R in accordance with its lot line adjustment.

In support of this amendment, a modified site plan has been submitted demonstrating that: (1) the Wolfe Educational Center is more than 1,000 feet from the proposed commercial cannabis site; (2) a revised parking plan pursuant to the Merced City Code; and (3) a revised refuse enclosure pursuant to the Merced City Code.

Sincerely,

Hayward Cheesebourough II

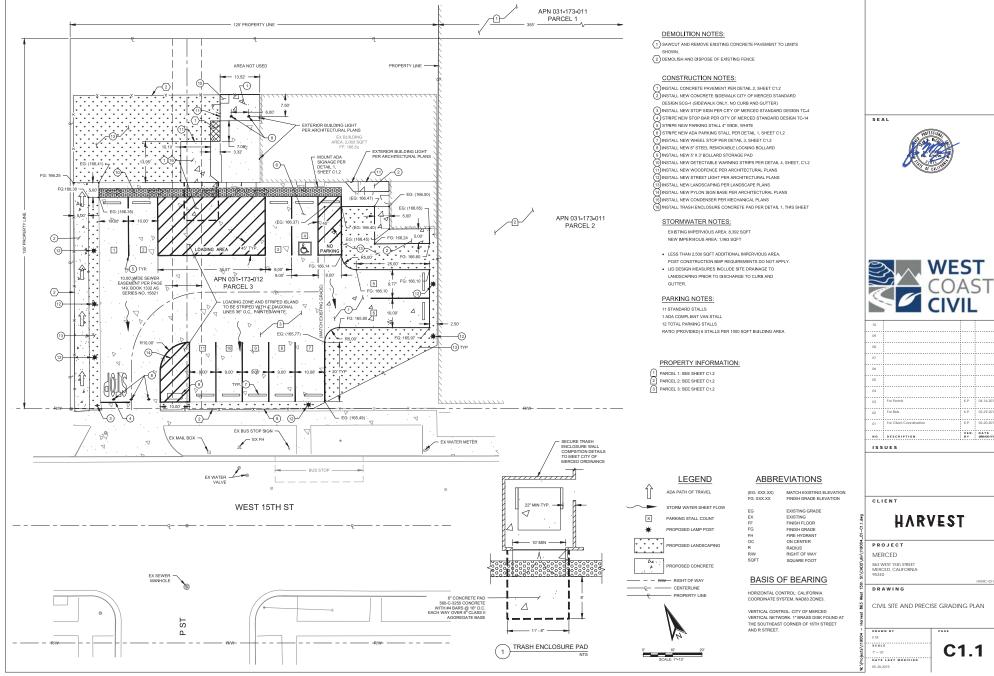
National Construction Project Manager

Harvest Inc.

714-227-3150

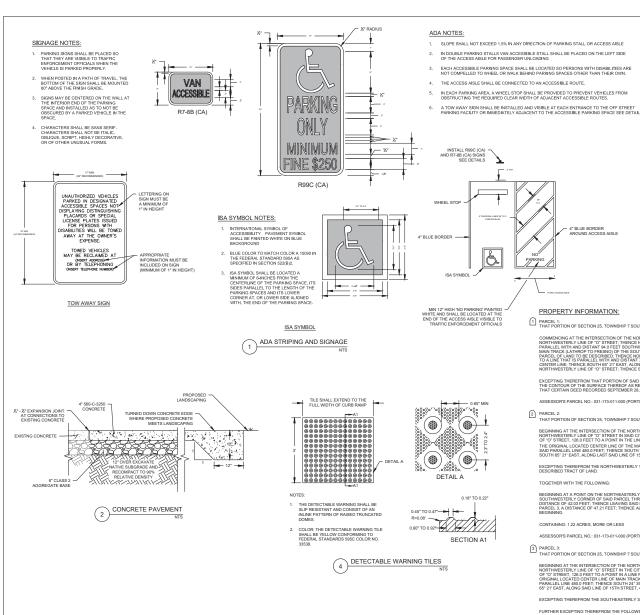
hcheesebourough@harvestinc.com

Know what's below. Call before you dig. 1-800-227-2600





		VER.	DATE
01	For Client Coordination		03-20-2019
02	For Bids	K.P.	03-29-2019
03	For Permit	K.P.	04-16-2019
04			
05			
06			
07			
08			
09			
10			



SEAL 1/2" DEEP HOLE W/MORTAL #6 @ 2'-6" SECTION WHEEL STOP

PROPERTY INFORMATION:

IND ACCESS AISLE

1 PARCEL 1: THAT PORTION OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 13 EAST, M.D.B.&M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY LINE OF 15TH STREET WITH THE NORTHEASTERLY PROLONGATION OF THE NORTHWISSTERLY LINE OF "0" STREET, THENCE NORTH AS "9" EAST, ALONG SAUD PROLOGATION, 126 OFFEET TO A POINT IN A LINE THAT IS PROMILED. WITH AND DESTAND 15 OFFET THE STREET WE NORTHWISSTERLY LINE OF THE PROMILED. WITH AND DESTAND 15 OFFET THE OFFET THE

EXCEPTING THEREFROM THAT PORTION OF SAID PROPERTY LYING BELOW A DEPTH OF FIVE HUNDRED (500) FEET MEASURED VERTICALLY FROM THE CONTOUR OF THE SURFACE THEREOF AS RESERVED BY SOUTHERN PACIFIC TRANSPORTATION COMPANY, A DELAWARE CORPORATION IN THAT CERTAIN DEED RECORDED SEPTEMBER 28, 1970 IN BOOK 1836, PAGE 521, MERCED COUNTY RECORD CONTOUR SECOND.

ASSESSOR'S PARCEL NO.: 031-173-011-000 (PORTION OF)

BEGINNING AT THE INTERSECTION OF THE INORTHEASTERLY LINE OF 16TH STREET WITH THE NORTHEASTERLY PROLONGATION OF THE INORTHEASTERLY AS THE INORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET THE POINT OF BEGINNING THE INORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN SAID MORTHEASTERLY LINE OF 15TH STREET, THENCE SOUTH 22* '39' WEST, 1280 FEET TO A POINT IN PERMITSHER.

EXCEPTING THEREFROM THE NORTHWESTERLY 12S FEET (MEASURED ALONG THE NORTHEASTERLY AND SOUTHWESTERLY LIENS) OF THE ABOVE DESCRIBED TRACT OF LAND.

BEGINNING AT A POINT ON THE MORTHEASTERN LINE OF TENTISTIEST, SAID POINT BEING 1550 FEET BOLITHEASTERN FROM THE SOUTHWESTERN COMBRER OF AND PROBLES THERE THE MET AND SAID OF THE SET BOLITHEASTERN LINE OF SAID STANLING THE CHEMICAL SHEET AND SAID STANLING THE SET SAID STANLING THE SAID STANLING THE SET SAID STANLING THE SAID STANLING T

CONTAINING: 1.22 ACRES. MORE OR LESS

ASSESSOR'S PARCEL NO.: 031-173-011-000 (PORTION OF)

(3) PARCEL 3: THAT PORTION OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 13 EAST, M.D.B.& M., DESCRIBED AS FOLLOWS:

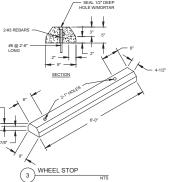
EXCEPTING THEREFROM THE SOUTHEASTERLY 355 FEET THEREOF.

FURTHER EXCEPTING THEREFROM THE FOLLOWING:

BEGINNING AT A POINT ON THE MORTHEASTERY. UNK OF 17TH STREET, TAND POINT BEING, 150. FEET SOUTHEASTERY FROM THE SOUTHWESTERY COMERING WAS DEPOIL THREE THENDER AND CAND CAND DEPOIL STREET STEET OF SOUTH STREET, THORTHE 5°21 00° WEST, A DISTANCE OF 42:00 FEET, THENCE LEAVING SAID MORTHEASTERY, UNK PORTH 5°73 30° DEST, TO A POINT ON THE EASTERY, UNK OF \$4.00 PARCELL A. DISTANCE OF 472 THEST, THENCE ALONGS AND ACASTERY, UNE SOUTH 42*300° WEST, A DISTANCE OF 43° DESTET, TO THE POINT OF

CONTAINING: 0.35 ACRES, MORE OR LESS

ASSESSOR'S PARCEL NO.: 031-173-012-000 (PORTION OF)



SEAL





For Permit For Bids For Client Coordination	KP. KP.	04-16-2019 03-29-2019 03-20-2019
For Bids	K.P.	03-29-2019
For Permit	K.P.	

CLIENT

ISSUES

HARVEST

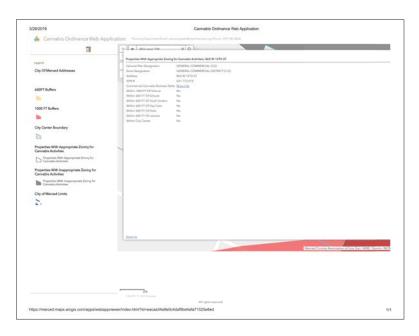
PROJECT MERCED 863 WEST 15th STREET MERCED, CALIFORNIA 95340

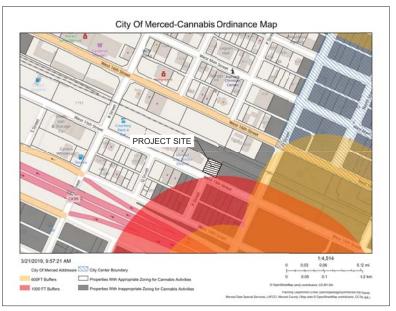
DRAWING

CIVIL DETAILS

SCALE DATE LAST MODIFIED

C1.2





SEAL





ISS	UES		
NO.	DESCRIPTION	VER. BY	(MM-DD-YY)
01	For Client Coordination	K.P.	03-20-2019
02			03-29-2019
	For Permit	K.P.	04-16-2019
04			
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CLIENT

HARVEST

PROJECT
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DRAWN BY

NIS C1.3

401

EXHIBIT "A"

EXISTING PARCEL DESCRIPTIONS

All that certain real property, described in Trustee Deed Document No. 2009-022222, Merced County records, lying in Section 25, Township 7 South, Range 13 East. M. D. B. & M., described as follows:

Parcel One:

Commencing at the intersection of the Northeasterly line of 15th Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street; thence North 24°39' East, along said prolongation, 126.0 feet to ta point in a line that is parallel with and distant 94.0 feet southwesterly, measured at right angles, from the original located centerline of the main track (Lathrop to Fresno) of the Southern Pacific Transportation Company, and the True Point of Beginning of the parcel of land to be described; thence North 65°21' West, along said parallel line, 355.0 feet; thence North 24°39' East, 22.0 feet to a line that is parallel with and distance 72.0 feet southwesterly, measured at right angles, from said original located centerline; thence South 65°21' East, along last said parallel line, 355.0 feet to said Northeasterly Prolongation of the Northwesterly line of "O" Street; thence South 24°39' West, along said prolongation, 22.0 feet to the True Point of Beginning.

Excepting therefrom that portion of said property lying below a depth of five hundred (500) feet measured vertically from the contour of the surface thereof.

Parcel Two:

Beginning at the intersection of the Northeasterly line of 15th Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street in said City of Merced; thence North 24°39' East along said Prolongation of said line of "O" Street, 126.0 feet, to a point in the line parallel with the 94.0 feet Southwesterly, at right angles, from the original located center line of the main track of the Central Pacific Railway Company; thence North 65°21' West, along said parallel line 480.0 feet; thence South 24°39' West, 126.0 feet to a point in said Northeasterly line of 15th Street; thence South 65°21' East, along last said line of 15th Street, 480.0 feet to the Point of Beginning.

Excepting therefrom the Northwesterly 125 feet (measured along the Northeasterly and Southeasterly lines) of the above described tract of land.

Parcel Three:

Beginning at the intersection of the Northeasterly line of 15th Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street in the City of Merced;

thence North 24°39' East along said Prolongation of said line of "O" Street, 126.0 feet to a point in a line parallel with and distant 94.0 feet Southwesterly, at right angles, from the original located center line of main track of the Central Pacific Railroad Company; thence North 65°21' West, along said parallel line 480.0 feet; thence South 24°39' West, 126.0 feet to a point in said Northeasterly line of 15th Street; thence South 65°21' East, along said line of 15th Street, 480.0 feet to the Point of Beginning.

Excepting therefrom the Southeasterly 355 feet thereof.



EXHIBIT "A"

PROPERTY LINE ADJUSTMENT No. _____CERTIFICATE OF COMPLIANCE No.

ADJUSTED PARCEL 1

DESCRIPTION

Parcel Three as described in Trustee Deed Document No. 2009-022222, Merced County records, lying in Section 25, Township 7 South, Range 13 East. M. D. B. & M., described as follows:

Parcel Three:

Beginning at the intersection of the Northeasterly line of 15th Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street in the City of Merced; thence North 24°39' East along said Prolongation of said line of "O" Street, 126.0 feet to a point in a line parallel with and distant 94.0 feet Southwesterly, at right angles, from the original located center line of main track of the Central Pacific Railroad Company; thence North 65°21' West, along said parallel line 480.0 feet; thence South 24°39' West, 126.0 feet to a point in said Northeasterly line of 15th Street; thence South 65°21' East, along said line of 15th Street, 480.0 feet to the Point of Beginning.

Excepting therefrom the Southeasterly 355 feet thereof.

Also Excepting therefrom the following:

Beginning at a point on the Northeasterly line of 15th Street, said point being 125.0 feet Southeasterly from the Southwesterly Corner of said Parcel Three; thence along said Northeasterly line of said 15th Street, North 65°21'00" West, a distance of 42.03 feet; thence leaving said Northeasterly line North 87°33'30" East, to a point on the Easterly line of said Parcel 3, a distance of 47.21 feet; thence along said Easterly line South 24°39'00" West, a distance of 21.50 feet, to the Point of Beginning.

Containing: 0.35 Acres, more or less



EXHIBIT "A"

PROPERTY LINE ADJUSTMENT No. _____CERTIFICATE OF COMPLIANCE No.

ADJUSTED PARCEL 2

DESCRIPTION

Parcels One and Two as described in Trustee Deed Document No. 2009-022222, Merced County records, lying in Section 25, Township 7 South, Range 13 East. M. D. B. & M., described as follows:

Parcel One:

Commencing at the intersection of the Northeasterly line of 15th Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street; thence North 24°39' East, along said prolongation, 126.0 feet to ta point in a line that is parallel with and distant 94.0 feet southwesterly, measured at right angles, from the original located centerline of the main track (Lathrop to Fresno) of the Southern Pacific Transportation Company, and the True Point of Beginning of the parcel of land to be described; thence North 65°21' West, along said parallel line, 355.0 feet; thence North 24°39' East, 22.0 feet to a line that is parallel with and distance 72.0 feet southwesterly, measured at right angles, from said original located centerline; thence South 65°21' East, along last said parallel line, 355.0 feet to said Northeasterly Prolongation of the Northwesterly line of "O" Street; thence South 24°39' West, along said prolongation, 22.0 feet to the True Point of Beginning.

Excepting therefrom that portion of said property lying below a depth of five hundred (500) feet measured vertically from the contour of the surface thereof.

Parcel Two:

Beginning at the intersection of the Northeasterly line of 15th Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street in said City of Merced; thence North 24°39' East along said Prolongation of said line of "O" Street, 126.0 feet, to a point in the line parallel with the 94.0 feet Southwesterly, at right angles, from the original located center line of the main track of the Central Pacific Railway Company; thence North 65°21' West, along said parallel line 480.0 feet; thence South 24°39' West, 126.0 feet to a point in said Northeasterly line of 15th Street; thence South 65°21' East, along last said line of 15th Street, 480.0 feet to the Point of Beginning.

Excepting therefrom the Northwesterly 125 feet (measured along the Northeasterly and Southeasterly lines) of the above described tract of land.

Together with the following:

Beginning at a point on the Northeasterly line of 15th Street, said point being 125.0 feet Southeasterly from the Southwesterly Corner of said Parcel Three; thence along said Northeasterly line of said 15th Street, North 65°21'00" West, a distance of 42.03 feet; thence leaving said Northeasterly line North 87°33'30" East, to a point on the Easterly line of said Parcel 3, a distance of 47.21 feet; thence along said Easterly line South 24°39'00" West, a distance of 21.50 feet, to the Point of Beginning.

Containing: 1.22 Acres, more or less



EXHIBIT "A"

PORTION OF PARCEL 3 TO BE AQUIRED BY PARCEL 2

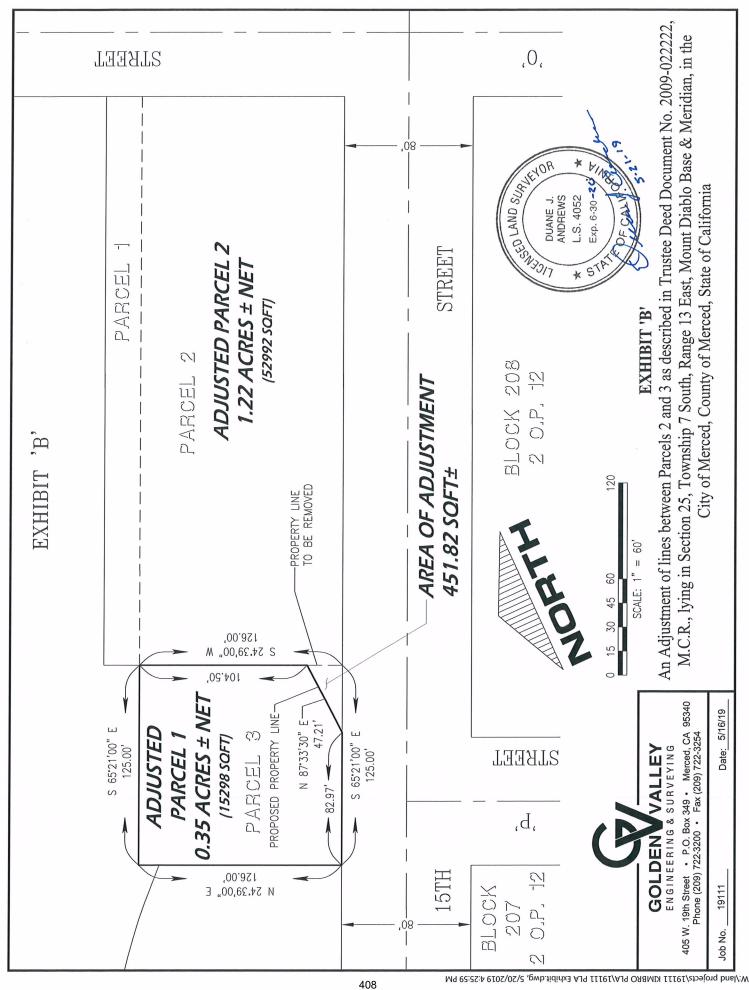
DESCRIPTION

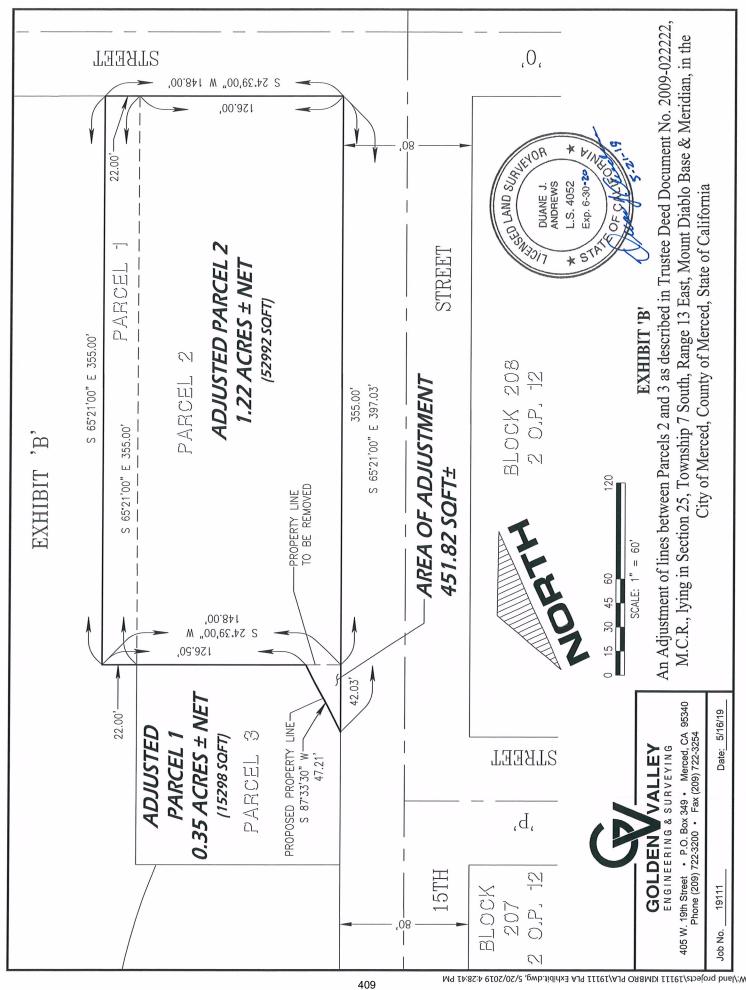
Being a portion of Parcel 3 as described in Trustee Deed Document No. 2009-022222, Merced County records, lying in Section 25, Township 7 South, Range 13 East. M. D. B. & M., described as follows:

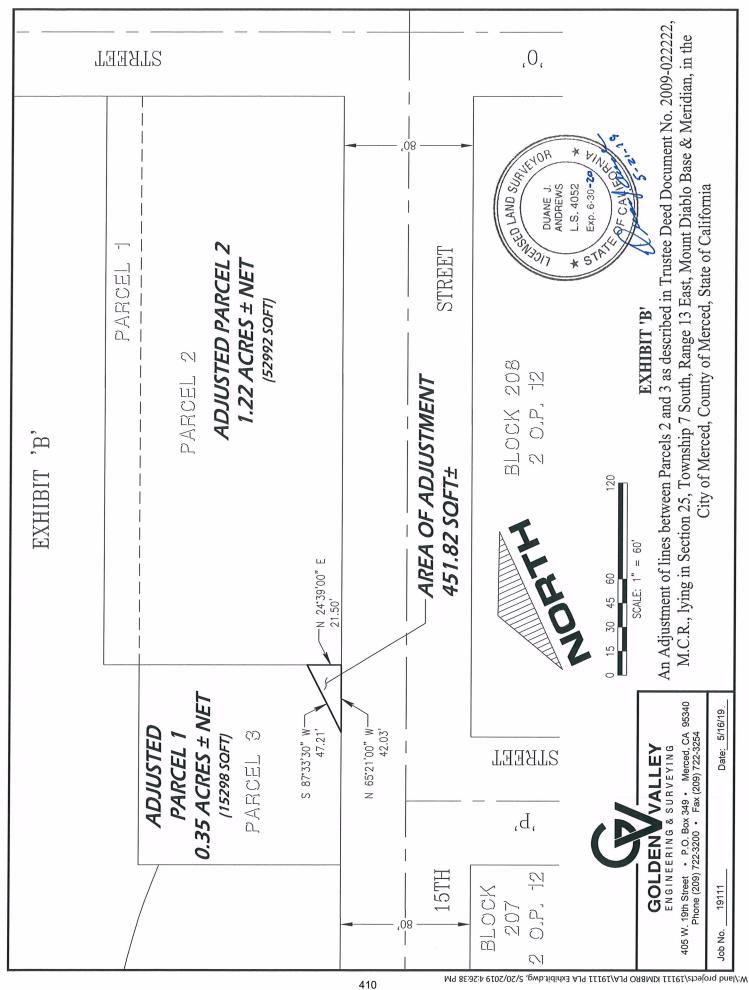
Beginning at a point on the Northeasterly line of 15th Street, said point being 125.0 feet Southeasterly from the Southwesterly Corner of said Parcel Three; thence along said Northeasterly line of said 15th Street, North 65°21'00" West, a distance of 42.03 feet; thence leaving said Northeasterly line North 87°33'30" East, to a point on the Easterly line of said Parcel 3, a distance of 47.21 feet; thence along said Easterly line South 24°39'00" West, a distance of 21.50 feet, to the Point of Beginning.

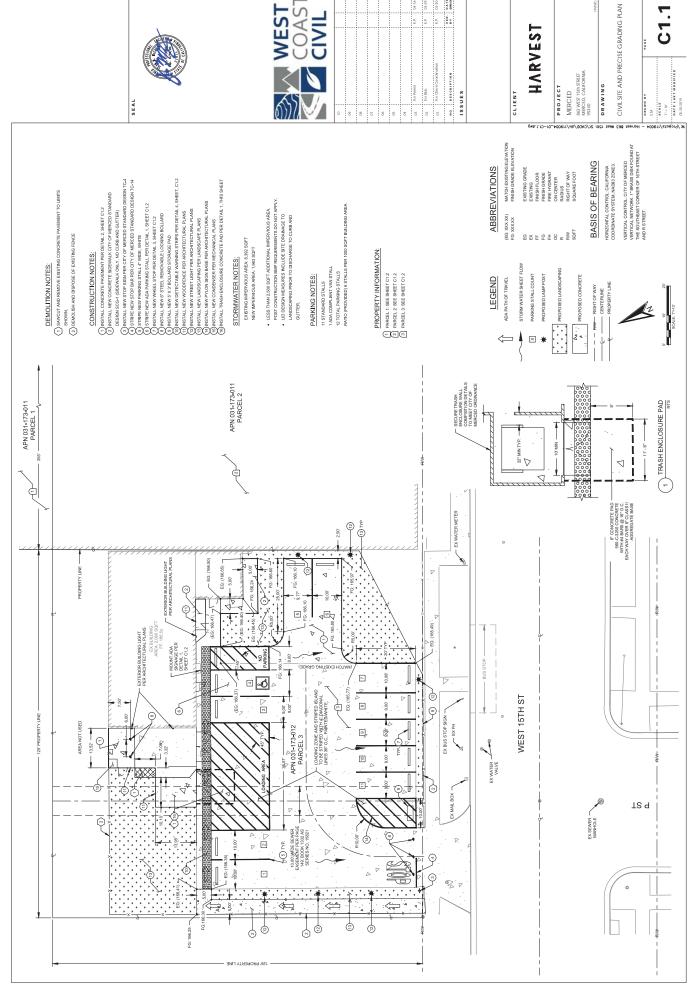
Containing: 451.82 Square Feet, more or less

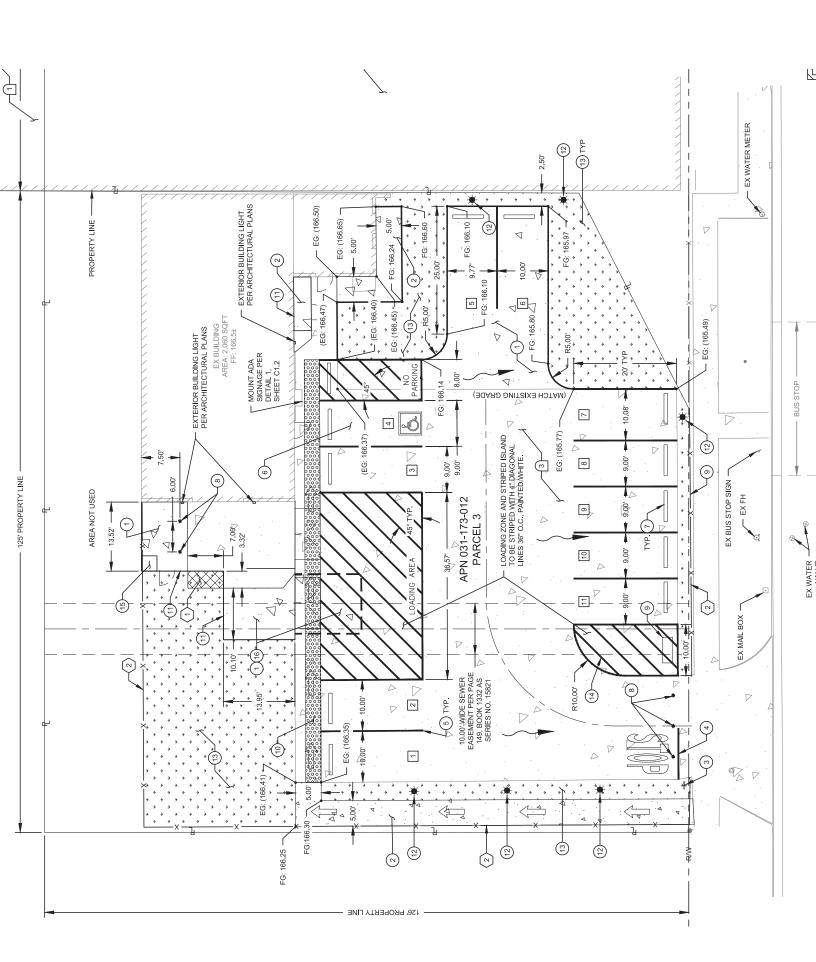
DUANE J.
ANDREWS
L.S. 4052
Exp. 6-30-20
FOALITOR

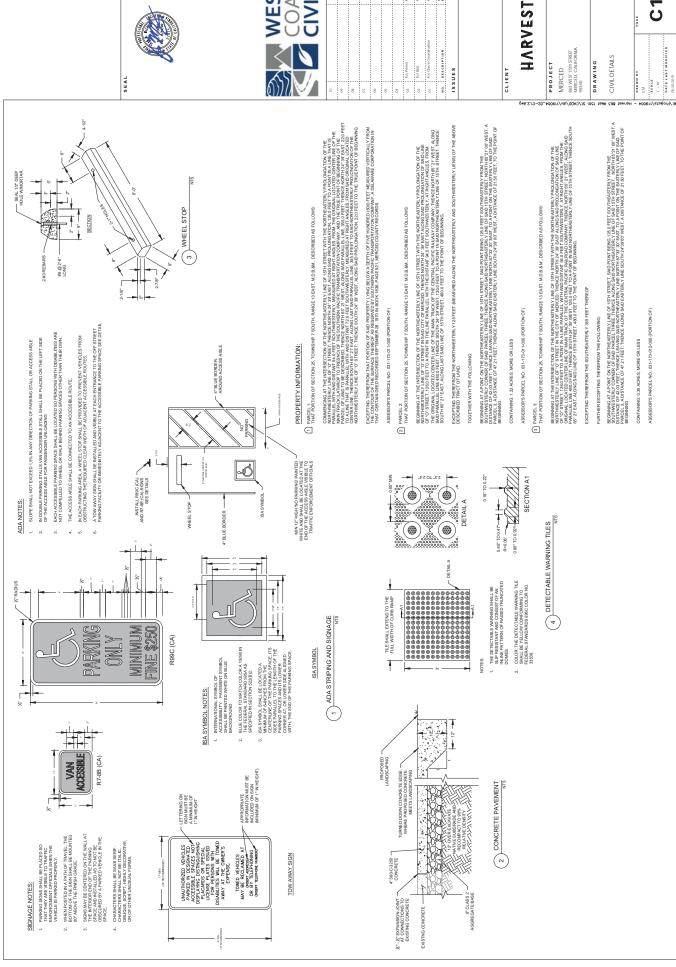












C1.2

CITY OF MERCED Planning Commission

Resolution #4021

WHEREAS, the Merced City Planning Commission at its scheduled meeting of June 5, 2019, held a public hearing and considered Commercial Cannabis Business Permit #18-14R, initiated by Harvest of Merced, LLC., on a property owned by Stephen G. Tinetti, trustee. This application is a request to permit the operation of a Retail Dispensary, including delivery services, for both medicinal and adult use cannabis and cannabis-related products on a 0.36 acre parcel in the General Commercial (C-G) Zone at 863 W. 15th Street.; also known as Assessor's Parcel No. 031-173-012; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through N of Staff Report #19-16; and,

NOW THEREFORE, the Merced City Planning Commission does resolve to hereby approve Commercial Cannabis Business Permit #18-14R, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners Camper, Drexel, Harris, Padilla, and Rashe

NOES: None

ABSENT: None (one vacancy) ABSTAIN: Chairperson Dylina

PLANNING COMMISSION RESOLUTION #4021	
Page 2	_
June 5, 2019	

Adopted this 5th day of June 2019

Chairperson, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval Planning Commission Resolution #4021 Commercial Cannabis Business Permit #18-14R

- 1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Attachment C of Staff Report #19-16, and Exhibit 2 (floor plan), Attachment D of Staff Report #19-16, except as modified by the conditions.
- 2. All conditions and requirements contained in Merced Municipal Code (MMC) Section 20.44.170/Ordinance #2498 (Attachment J) shall apply. Particular attention shall be paid to MMC 20.44.170(F) "Additional Regulations for Dispensary and Retail Sales of Cannabis" and MMC 20.44.170(G) "Additional Regulations for Commercial Cannabis Delivery Services."
- 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.
- The developer/applicant shall indemnify, protect, defend (with counsel 5. 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,

EXHIBIT A

- 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.
- 6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control. State Law shall prevail in regards to cannabis activities as permitted by State Law.
- 7. The proposed project shall comply with all applicable regulations of the State of California including, but not limited to, those found in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).
- 8. The applicants shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment K of Staff Report #19-16) at the time of submittal for building permits for tenant improvement.
- 9. The details of the property's fencing (if any), security, and screening are to meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
- 10. The applicants shall keep on the premises of the proposed project site a physical copy of the approved plans, to be annotated and updated accordingly with any notes, changes, or requirements determined to be necessary by representatives of the City of Merced or any contractors that the City of Merced may employ for the purpose of site inspections. These plans shall be made available to the City's representatives, employees, agents, inspectors, or contractors upon request.
- 11. Fire sprinklers shall be modified or installed to accommodate the building configuration and process configuration prior to occupancy if required by the Chief Building Official.
- 12. Regulatory Fees, as per Resolution #2017-67, are to be paid prior to the issuance of a Certificate of Occupancy and annually thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually to account for inflation by using the Consumer Price

- Index (CPI). In no event shall the fees in any year be less than the preceding year.
- 13. A Commercial Cannabis Business Permit is valid for one year or until December 31 of each year, unless sooner revoked. Applications for the renewal of a permit shall be filed with the Director of Development Services, in accordance with 20.44.170(L).4, "Commercial Cannabis Business Permit Renewal (All Types)", at least sixty (60) calendar days before the expiration of the current permit. If the permittee allows their permit to lapse, they shall be required to submit a new application, pay corresponding fees and be subject to all aspects of the selection process.
- 14. As per Ordinance #2498, the use of vending machines to dispense cannabis is strictly prohibited. Any vending machines on the property must not contain cannabis or cannabis-based products.
- 15. The applicants shall provide or cause to be provided a trash enclosure on the property such that all waste is securely stored until it is removed from the premises. The details, including elevations, roofing, siting, and orientation of the enclosure, shall be responsive to input from the City's Department of Public Works, to whom access to this enclosure shall be provided.
- 16. Key access and/or a Knox Box to the perimeter fence shall be provided to the City of Merced Fire Department, Department of Public Works, and Police Department.
- 17. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repaired if the permit value of the project exceeds \$100,000. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State standards and regulations.
- 18. The parking lot shall be repaved and restriped in compliance with the City of Merced's City Standard Designs.
- 19. If the applicants are unable to provide a FEMA flood elevation certificate showing that the top of the bottom floor and all equipment are at the required height as to not mandate mitigation measures if applicable, flood mitigation measures shall be required to meet the approval of the City flood plain manager and City Engineer.

- 20. There shall be no shared access to the building sharing a common wall with 863 W. 15th Street. Any existing shared access point must be sealed prior to the issuance of a Certificate of Occupancy.
- 21. The details of the final design of the exterior elevations and any signage shall be approved by Planning staff prior to issuance of a Certificate of Occupancy.

n:shared:planning:PC Resolutions: CCBP #18-14R Exhibit A

CLARK HILL

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F (415) 984-8599

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June 13, 2019

VIA PERSONAL DELIVERY

Merced City Council 678 West 18th Street Merced, California 95340

Re: Appeal of Commercial Cannabis Business Permit #18-14R to Harvest of Merced, LLC, City of Merced Planning Commission Resolution #4021

Dear Council Members,

This office represents Jiva Life, LLC, ("Jiva Life") and we write on its behalf to appeal Commercial Cannabis Business Permit #18-14R (the "Permit"), which the City of Merced ("City") Planning Commission ("Commission") granted to Harvest of Merced, LLC ("Harvest") on June 5, 2019 pursuant to resolution #4021. We object to the granting of the Permit. This letter shall serve as an appeal from issuance of the Permit.

The City has exhibited blatant favoritism towards Harvest in its decision to award the Permit. We understand the City previously denied Harvest the Permit because Harvest is located within 1,000 feet of a school, the Wolfe Education Center ("Center"). Rather than disqualify Harvest from receiving the Permit, as the Merced County Municipal Code ("Code") required, the City chose to rewrite the Code to allow Harvest to amend its Permit application and submit a lot line adjustment so that it would no longer be located within 1,000 feet from the Center. Harvest has not moved the physical location of its operations. Rather, it has engaged in gamesmanship to artificially change how the distance between its premises and the Center is measured. The City should have disqualified Harvest initially and selected the next qualified applicant on the list. It should award the Permit to Jiva Life, who has complied with all the Code's requirements and is next-in-line for a permit.

Based on the facts to date, it appears the City was determined to award the Permit to Harvest in spite of Harvest's failure to meet minimum Code requirements. The Code requires all commercial cannabis permits to be awarded in an objective manner, and as a matter of law, a municipality may not exhibit favoritism or inequity in the enforcement of its laws. The City has shown extreme favoritism towards Harvest in the Permit process; it literally rewrote the Code to allow the Permit award to Harvest. Such favoritism is a misuse of municipal power. All businesses applying for the Permit must be held to the same standards, and those standards must be applied uniformly to all applicants. The Council should not rewrite the

Merced City Council Re: Appeal of Commercial Cannabis Business Permit #18-14R June 13, 2019 Page 2

Code to benefit a single entity that was previously disqualified because it was located too close to a school.

The City should not have awarded the Permit to Harvest. The City Council ("Council") should reverse the Permit based on (1) Harvest's failure to comply with the Code requirements as originally promulgated by the Council and as promulgated at the time of the submission of the application, and (2) the impermissible favoritism the City has shown towards Harvest. With Harvest properly disqualified and its Permit reversed, the Permit should be awarded to Jiva Life.

I. BACKGROUND

A. THE COMMISSION DENIED HARVEST THE PERMIT BECAUSE HARVEST WAS LOCATED WITHIN 1,000 FEET OF A SCHOOL

While the facts of this matter are egregious, they are not complicated. On December 4, 2017, the Council passed Ordinance Number 2480 codifying Section 20.44.170 of the Code, which regulates commercial cannabis activity.

Among other things, Section 20.44.170(L) establishes a process and procedure for the City to award four permits to commercial cannabis business (a "Cannabis Permit") to operate within the City. The City "established a <u>merit based</u> scoring system to <u>objectively award permits</u>..." (Code, § 20.44.170(L)(1)(c) [Emphasis added].) To be eligible to receive a Cannabis Permit, each business applicant <u>must</u> strictly comply with all applicable state and municipal regulations, including but not limited to "meet[ing] the distance requirements from sensitive uses..." (Code, § 20.44.170(L)(1)(i)(iii).)

The Code requires that "[n]o cannabis dispensary may be located within a 1,000-foot radius from a school..." (Code, \S 20.44.170(L)(3)(f).) It defined a school as "any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive..." (Code, \S 20.44.170(C)(48).)

Numerous businesses submitted Cannabis Permit applications, and the City determined that 22 applicants, including Jiva Life and Harvest met the rigorous criteria.

On January 16, 2018, the Council passed Resolution Number 2018-01, which among other things, established the numerical criteria to be used as the "merit based scoring system" to award Cannabis Permits, as required by Code section 20.44.170(L)(1)(c). Based on the selection and ranking criteria, Harvest was ranked the number four applicant. Jiva Life was ranked sixth. (Attached as **Exhibit A** is a true and correct printout of the City's website showing the rankings of the Cannabis Permit applicants.)

On September 19, 2018, the Commission awarded the Permit to Harvest, and it awarded Cannabis Permits to the other top three ranked applicants.



Merced City Council
Re: Appeal of Commercial Cannabis Business Permit #18-14R
June 13, 2019
Page 3

Medallion Wellness ("Medallion"), who had had placed fifth on the ranking system and was not awarded a Cannabis Permit, appealed the Permit because Harvest was within 1,000 feet of the Center, and the Center is a school.

The Council held a public hearing on October 25, 2018 and reversed the Commission's award of the Permit and remanded the matter back to the Commission to address whether (1) the Center is a school and (2) Harvest is within 1,000 feet of the Center.

On November 14, 2018, the Council, after public hearing, made findings of fact that (1) the Center is a school and (2) Harvest is within 1,000 feet of the Center. On that basis, the Council reversed the award of Permit.

B. THE CITY REWROTE THE CODE TO ALLOW HARVEST TO MODIFY ITS APPLICATION AND CHANGE HOW HARVEST MEASURED DISTANCE TO THE SCHOOL

Code section 20.44.170(L)(3)(f) states "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." Based on this definition, the Council determined Harvest is located within 1,000 feet of the school Center. Notably, on April 1, 2019, the Council adopted resolution number 2019-12, which, among other things, established that the Center is school for the purposes of the Code.

To circumvent the fact Harvest is located within 1,000 feet of the Center, on March 4, 2019, the City approved Ordinance Number 2498, which amended Section 20.44.170 of the Code. Among other things, Ordinance Number 2498 amended Section 20.44.170(L)(3)(f)(iii) to state that after submission of an application, an applicant may be permitted to make "Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located."

In connection with Ordinance Number 2498, Harvest appears to have submitted a lot line adjustment that purports to move the lot line of Harvest's property back approximately 20 feet so that it is no longer within 1,000 feet of the Center. Based on the lot line adjustment, the Commission awarded the Permit to Harvest.

C. THE CITY GAVE A FIFTH COMMERCIAL CANNABIS PERMIT TO MEDALLION SO IT WOULD NOT OBJECT TO HARVEST'S PERMIT

In addition to allowing Harvest to amend its Permit application and make a lot line adjustment to change how it measured the distance to the Center, the City also amended the Code so that Medallion would not object to Harvest's Permit.

Without providing any explanation why, as part of Ordinance Number 2498, the City increased the number of Cannabis Permits from four to five by amending Code section 20.44.170(F)(1) accordingly. The only apparent explanation why the City chose to increase



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Merced City Council Re: Appeal of Commercial Cannabis Business Permit #18-14R June 13, 2019 Page 4

the number of Cannabis Permits it was awarding was so Medallion—the fifth ranked applicant—would receive a permit and would withdraw its objection to the Harvest Permit.

II. ARGUMENT

A. HARVEST SHOULD HAVE BEEN DISQUALIFIED FOR THE PERMIT BECAUSE IT WAS LOCATED WITHIN 1,000 FEET OF THE CENTER

Code section 20.44.170(L) establishes the selection process for the award of Cannabis Permits. In relevant part, Section 20.44.170(L)(1)(d) states:

The initial application period shall be twenty-one (21) calendar days from the date the applications are released. * * * 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.'

Section 20.44.170(L)(1)(d) states:

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 ten (10) calendar days from receipt of notice to correct the deficiency. * * * If the deficiency is not corrected within ten (10) calendar days, the director of development services may deny the permit and notify the applicant of this determination in writing within ten (10) calendar days following the director of development services decision.

The Commission determined that Harvest did <u>not</u> meet the minimum application guidelines because its premises were located within 1,000 feet of the school Center. Nor was Harvest able to "correct" the deficiency with its application. The deficiency was not related to the content of the application. Rather, the deficiency was based on the physical location of Harvest's premises. Further, the eventual 'correction' of the lot line adjustment did not occur within the required ten day window.

Thus, under the black-letter language of the Code, Harvest should never have been placed on the "Qualified Commercial Cannabis Business Application List—Dispensaries/Retail Sales" and it should not have been eligible to receive the Permit. Because Harvest did not satisfy the minimum Code requirements, it should have been disqualified from receiving the Permit. Indeed, that is why the Commission and the Council both properly denied Harvest the Permit.



Merced City Council

Re: Appeal of Commercial Cannabis Business Permit #18-14R

June 13, 2019

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B. THE CITY HAS IMPERMISSIBLY SHOWN FAVORITISM TO HARVEST IN THE PERMIT SELECTION PROCESS

In setting up the strict merit based system that was implemented by the City, the City was cognizant of its desire to invite qualified competition and to guard against favoritism and improvidence. Indeed, Code section 20.44.170(L)(1)(c) requires that the Cannabis Permit process must be objective.

Furthermore, California law requires that business permits may not be granted or refused by a municipality or municipal officer in an arbitrary manner and requires that any municipal ordinance be implemented in a uniform and objective manner. (Serv-U-Garbage Co. v. Board of Health of City and County of San Francisco (1930) 107 Cal.App. 386, 392; Village of Willowbrook v. Olech (2000) 528 U.S. 562, 564.) Based upon the above, the Code has not been implemented in a uniform or objective manner.

There can be no dispute that Harvest was ineligible for the Permit under the Code's original requirements. It was located within 1,000 feet of a school. For some subjective reason, Harvest was allowed special dispensation and was awarded the Permit in spite of the Code's requirements. To accomplish that end, the City modified the permitting and application process mid-stream so that Harvest could amend its Permit application and further allowed Harvest to artificially change how distance to the Center would be measure. Notably, Harvest has not moved the physical location where it will sell cannabis or cannabis products. Other than an arbitrary desire to award Harvest the Permit, there is no rational explanation why the City chose to disregard the merit award system and amend the Code given that there was other Qualified Commercial Cannabis Businesses on the list. It should have simply disqualified Harvest and moved on to the next qualified applicant who did meet the stringent requirements.

Not only has the City impermissibly shown favoritism towards Harvest, it has done so at the expense of other applicants who did comply with the Code's requirements—namely Jiva Life. Had Harvest been properly disqualified, Medallion would have been awarded the fourth Cannabis Permit and Jiva Life would have received the fifth.

The Council should not reward Harvest for its failure to comply with the strict requirements originally promulgated in the Code and applied to all applicants other than Harvest. Nor is the Council permitted to show favoritism towards Harvest, as has occurred here.

III. CONCLUSION

Harvest chose to locate its business within 1,000 feet of a school in violation of the Code's requirements. As a result, Harvest should have been ineligible to receive the Permit. Rather than disqualify Harvest from receiving the Permit, as it should have done, the City rewrote the Code specifically to accommodate Harvest and award it the Permit allowing Harvest additional time to correct the violation through a lot line adjustment. Throughout the



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Merced City Council

Re: Appeal of Commercial Cannabis Business Permit #18-14R

June 13, 2019

Page 6

permitting process the City has impermissibly shown favoritism towards Harvest, when it is required to treat all Cannabis Permit applications equally and objectively.

The Council should reverse the Permit awarded to Harvest. In so doing, it should award Jiva Life the available fifth permit, as Jiva Life is the next-in-line to receive the Permit based on the objective ranking criteria the City established.

Respectfully submitted,

CLARK HILL LLP

Jeffrey H. Belote

cc: client W/ enclosures

EXHIBIT A

ry, this page has moved! ase click **here** to go to the new location.

Cannabis Businesses in Merced

Revised Commercial Cannabis Business Permit Ordinance (Effective April 17, 2019)

The City of Merced has recently amended its Commercial Cannabis Business Permit Ordinance, which includes various updates including the addition of a 5th retail/dispensary permit (from the already established list of applicants). The revised Ordinance #2498 will be effective on April 17, 2019. Ordinance #2498 replaces the current Ordinance #2480. Resolution #2019-12 also established the "City's Official List of Schools" in accordance with the City's Cannabis regulations. Copies of the Revised Ordinance and the List of Schools can be downloaded below under the folder entitled "01-Revised Ordinance (Effective April 17, 2019)."

Planning Commission public hearings to consider the 4th (which had previously been under appeal) and 5th retail dispensary permits will likely be heard in late May 2019.

<u>Planning Commission Awards Retail Cannabis Permits (September 2018)/Appeal Filed on One Application</u>

On September 18 & 19, 2018, the City of Merced Planning Commission held public hearings on the top 4 cannabis dispensary/retail sales applications. After the public hearings, the Planning Commission approved all four applications as follows: 1) "Blue Fire" at 1975 W. Olive Ave; 2) "Green Door" at 811 W. Main St; 3) "Manzanita" at 1594 W. 18th St; and 4) "Harvest of Merced" at 863 W. 15th St. Please note that an appeal was filed on the "Harvest" application, which is on hold until the appeal is decided but the other applicants can move forward with their projects.

The City is still accepting applications for Cannabis Manufacturing, Cultivation, Distribution, and Testing businesses. However, the City will not be processing any more retail applications since the City's ordinance limits those to five. Please see our revised/FAQ's for download below along with a new

<u>City Announces Cannabis Dispensary Application Rankings and Schedules Planning Commission Public</u> <u>Hearings for September 18 & 19, 2018</u>

The City of Merced received 22 complete applications for retail cannabis dispensaries in March 2018. Only four dispensaries may be approved under the City's cannabis ordinance (this has been changed to five under the revised ordinance—see above). The Planning Commission has already approved 10 cannabis business permits for manufacturing, cultivation, and distribution operations (see below).

A Selection Committee of City Manager Steve Carrigan, Police Chief Chris Goodman and Director of Development Services Scott McBride reviewed the applications and scored them based on criteria established by the City Council. All the proposed business owners were subject to a detailed background check by the Police Department.

A total score of 100 points was possible for each application. Points were awarded based on non-discretionary facts, such as public/neighborhood outreach programs, parking, business hours, previous experience and qualifications of the owners, access to capital, inclusion of certain safety features and local residency. There were 29 points awarded at the discretion of the Selection Committee based on enhanced security measures, community benefits, and other outstanding features above the minimum requirements of the applications.

The total scores of the reviewers were divided by three for an average score. The applications were ranked based on that average score.

The top four applications were scheduled for public hearings before the Planning Commission on September 18 & 19, 2018 (see above).

The scores and rankings are as follows:

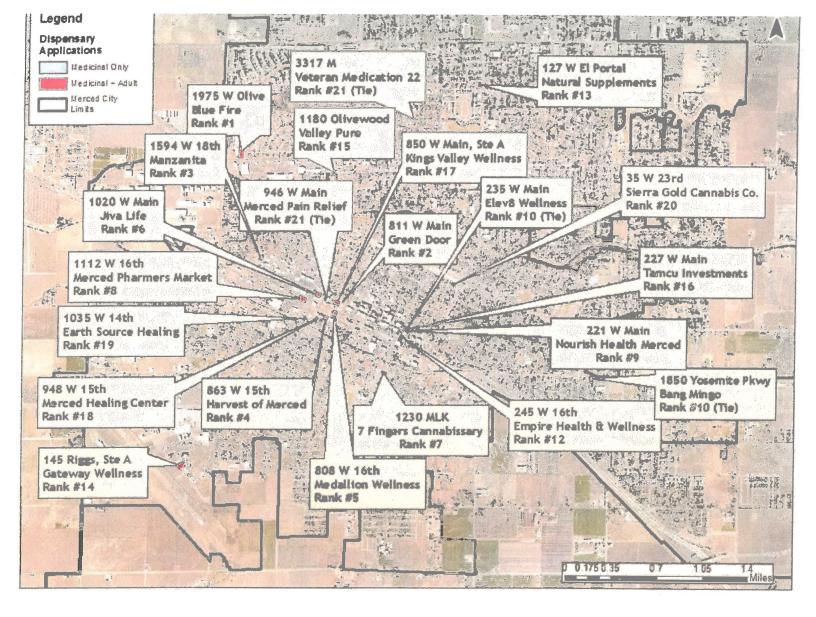
Commercial Cannabis Business Permit Applications for	TOTAL	AVERAGE	RANKING
<u>Dispensaries</u>	SCORE	SCORE	MAINNING
CCBP #18-06R ("Blue Fire") at 1975 W Olive Ave	295	98.333	1
CCBP #18-10R ("Green Door") at 811 W Main St	292	97.333	2
CCBP #18-17R ("Manzanita") at 1594 W 18 th St	289	96.333	3
CCBP #18-14R ("Harvest of Merced") at 863 W 15 th St	285	95.000	4
CCBP #18-21R ("Medallion Wellness") at 808 W 16th St	269	89.667	5
CCBP #18-30R ("Jiva Life") at 1020 W Main St	255	85.000	6
CCBP #18-22R ("7 Fingers Cannabissary") at 1220-30 Martin Luther King Jr Wy	254	84.667	7
CCBP #18-11R ("Merced Pharmers Market") at 1112 W 16th St	246	82.000	8
CCBP #18-29R ("Nourish Health Merced") at 221 W Main St	244	81.333	9
CCBP #18-08R ("Bang Mingo") at 1850 Yosemite Pkwv 428	240	80 00 0	10 (Tie)

	1		
CCBP #18-13R ("Empire Health & Wellness") at 245 W 16th St	224	74.667	12
CCBP #18-09R ("Natural Supplements") at 127 W El Portal Dr	216	72.000	13
CCBP #18-07R ("Gateway Wellness") at 145 Riggs, Ste A	213	71.000	14
CCBP #18-25R ("Valley Pure") at 1180 Olivewood Ave	202	67.333	15
CCBP #18-26R ("Tamcu Investments") at 227 W Main St	201	67.000	16
CCBP #18-23R ("Kings Valley Wellness") at 850 W Main, Ste A	199	66.333	17
CCBP #18-12R ("Merced Healing Center") at 948 W 15 th St	187	62.333	18
CCBP #18-24R ("Earth Source Healing") at 1035 W 14 th St	179	59.667	19
CCBP #18-16R ("Sierra Gold Cannabis Co.") at 35 W 23 rd St	168	56.000	20
CCBP #18-20R ("Veteran Medication 22") at 3317 M St	157	52.333	21 (Tie)
CCBP #18-18R ("Merced Pain Relief") at 946 W Main St	157	52.333	21 (Tie)

The Following application was disqualified:

	T	T	Y-1000	Ť
CCBP #18-15R ("Aleafiate") at 1471 Yosemite Pkwy	213	71.000	DQ	

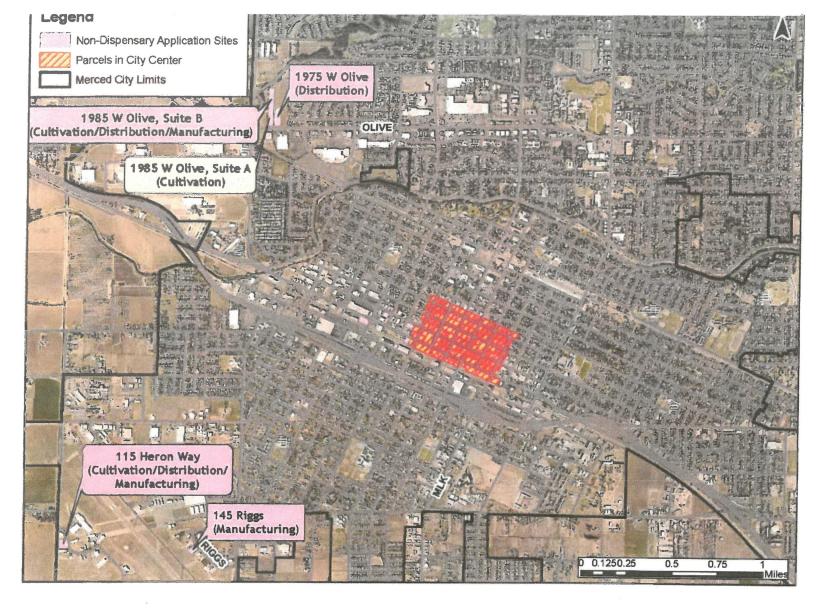
A map of all the cannabis dispensary applications is below.



Non-Retail Cannabis Applications Approved (August 2018)

The City of Merced is very pleased to note that the **10** non-retail applications for cannabis businesses (including cultivation, manufacturing, and distribution) were approved by the Planning Commission in August 2018. Detailed information about those applications can be found on the Planning Commission page at the link below for the Planning Commission meetings of August 8 and 22, 2018. A map of the locations is included below.

Planning Commission Staff Reports



The City's schedule for considering Cannabis Business Permits is below:

CITY OF MERCED 2018 COMMERCIAL CANNABIS BUSINESS PERMITS



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Application Update-July 2018

The City received a total of **30** applications for Commercial Cannabis Business Permits (CCBP) during the initial application period (March 5-26, 2018). Those applications include **24** for retail sales/dispensaries (**23** of which are combined adult use/medical dispensaries with delivery and **1** medical only with delivery), **2** for cultivation, **2** for manufacturing, and **2** for distribution. (No applications for testing were received.) **4** additional applications for non-retail uses were subsequently received--**1** for cultivation, **2** for distribution, and **1** for manufacturing, bringing the total up to **34**. After checking all the applications for completeness and Phase I requirements, all but **1** application passed and moved onto Phase II, bringing the total to **33** with **10** being non-retail and **23** being retail.

Please note that CCBP's for retail sales/dispensaries are limited to only 4 per the City's Ordinance. Therefore, the City expects to award those 4 retail sales permits from the 24 initial applications received, so it is likely that any dispensary applications received after 3/26/18 will remain on a Waiting List indefinitely. Since there is no limit on the number of cultivation, distribution, manufacturing, or testing CCBP's., the City will continue to accept applications for those uses and they will be processed as time permits after the 10 applications above for other uses are processed.

Selection Committee of retail sales/dispensaries to determine the top 4 candidates to move onto Planning Commission public hearings. For all other uses, Phase 2 will involve the detailed background checks prior to being scheduled for Planning Commission public hearings.

Cannabis Location Web Mapping Tool Now Available

The City of Merced is excited to launch our Cannabis Location Web Mapping Tool! This tool will help you determine if a particular site is suitable for a cannabis business. By typing in the street address, you will be able to see what the General Plan and Zoning Designations are, if the site is near a sensitive use (i.e., schools, daycare centers, youth centers, etc.), and link to the Cannabis Business Land Use Table to determine if the site is eligible for a cannabis business. Please visit this site and use this tool prior to contacting the City to determine if a site is eligible.

Also, please note the following disclaimer:

"Use of this online tool is intended for informational purposes and is not binding confirmation that a property complies with any or all aspects of the City of Merced's requirements to obtain a Commercial Cannabis Business Permit. Determinations of zoning compliance, distance from sensitive uses, and other requirements will be made by the Planning Department of the City of Merced in accordance with the regulations set forth by the Merced City Council in Ordinance 2480."

The City of Merced does not have jurisdiction over properties outside its City Limits. To avoid confusion, any property that is searched for outside of the Merced City Limits will return no results.

All Properties within 1,000 feet of a school are shown as "Properties with Inappropriate Zoning for Cannabis Activities" at this time. This is because Dispensaries/Retail Sales are impermissible at this distance. However, some other Cannabis Activities are permissible so long as they are not within 600 feet of a school. This may mean that another Cannabis Activity (Manufacturing, Testing, Cultivation or Distribution) may still be appropriate based on distance from other sensitive uses and the information in Table 20.44-1, Commercial Cannabis Business, from the Merced Cannabis Ordinance 2480.

For any questions regarding this web application, the information contained herein, or regarding the Commercial Cannabis Business permit application process, please contact the City of Merced's Planning Department at planningweb@cityofmerced.org, by calling 209-385-6858, or in-person on the 2nd Floor of the Merced Civic Center at 678 West 18th Street, Merced, CA 95340 between the hours of 10AM to Noon and 1PM to 5PM Monday through Friday.

<u>Link to Cannabis Location Web Mapping Tool:</u>
http://bit.ly/CityofmercedCannabisOrdinance

2018)-NOW CLOSED!

The City of Merced is pleased to announce that the initial application period for Commercial Cannabis Business Permits will be from Monday, March 5, 2018 through Monday, March 26, 2018. Please see the flyer below for details. **THE INITIAL APPLICATION PERIOD IS NOW CLOSED!**

Application forms are available for download below in the folder entitled "Application Forms and Schedules." (Please note that the applications were revised on 1/31/18 in order to include the Environmental Review Checklist, which needs to be submitted with the application. The environmental application fee for a "Categorical Exemption" is \$123 in 2018 and will apply to most applications. However, if new construction is involved with your application, please contact Planning Staff to determine the appropriate level of environmental review.)

If you would like to request a pre-application meeting with City Staff, please download the form from the January 26 workshop below and submit it to the Planning Division at planningweb@cityofmerced.org

Commercial Cannabis Business Permits Application Submittal Dates



To Schedule a Pre-Application
Meeting with the Director of
Development Services or Designee,
please call the number below.

CITY OF MERCED

Planning & Permitting Division 678 W. 18th Street Merced, CA 95340

Phone: 209-385-6858 Fax: 209-725-8775 Email:

planningweb@cityofmerced.org

The City of Merced will soon begin accepting applications for Commercial Cannabis Business Permits according to the provisions of Ordinance No. 2480. The initial application period for both Merit-based (Dispensaries/Retail Sales) and Non-Merit-Based (All Other Cannabis Businesses) Permits will be:

Monday, March 5, 2018 through

Monday, March 26, 2018
During Normal Business Hours
10:00 AM to 5:00 PM

Merced Planning Division (2nd Floor) Merced Civic Center at 678 W. 18th St., Merced

All applications must be submitted in person. All application forms submitted after those dates will be placed on a Waitlist.

Please refer to the website for the application forms, fees, and additional information about the application process.

City of Merced Website Link: https://www.cityofmerced.org/depts/cd/planning/ cannabis businesses.asp On Friday, January 26, 2018, the City held a workshop to discuss the application process for Commercial Cannabis Business Permits. The City was very pleased with the turnout of over 130 people interested in our application process. The schedule for submitting applications, the application forms, and maps for determining the distance from sensitive land uses were presented at the workshop. For a copy of the presentation and handouts from the workshop, please see the folder entitled "January 26, 2018 Application Workshop Materials" below.

A web-based application for determining the distance from sensitive land uses will be coming soon...keep checking this page for information on the web-based tool. In the meantime, we have found some errors in the maps that were displayed at the January 26 workshop so they have been removed from the website. When the maps are back up, please note the following disclaimer: "These cannabis maps were prepared for general inquiries only. The City of Merced is not liable for any errors or omissions that may occur. Official information for specific parcels or addresses should be obtained from the City Planning Division by sending the location to planningweb@cityofmerced.org."

City Council Approves the Cannabis Ordinance (Effective on January 3, 2018)

On November 20, 2017, the City Council held a public hearing on the proposed Cannabis Ordinance. After the public hearing and discussing all the issues, the City Council, by a 5-2 (5 ayes, 2 noes) vote, introduced Ordinance #2480 with the following changes: a) allowing dispensaries in the Neighborhood Commercial (C-N) zone; b) allowing dispensaries in the Light Industrial (I-L) zones; c) allowing volatile manufacturing in the Light Industrial (I-L) zone; d) allowing adult use dispensaries in the Commercial Office (C-O) zone; and, e) adding some language regarding the "Watson Advisement" regarding driving under the influence to the required signs to be posted in dispensaries. The Ordinance was revised and came back to the City Council for a second reading/adoption on December 4, 2017. That night, Ordinance #2480 was adopted and became effective 30 days later on January 3, 2018. Various documents relating to the Cannabis Ordinance can be downloaded below, including the adopted Ordinance. Ordinance #2480 replaced Ordinance #2464, adopted in 2016.

At its December 18, 2017, meeting, the City Council held a public hearing and considered adoption of a resolution to establish application fees for Commercial Cannabis Business Permits as well as annual regulatory fees for monitoring and enforcement. After the public hearing, the City Council adopted Resolution #2017-67 by a 7-0 vote. Supporting documents are available for download below.

On January 16, 2018, the City Council adopted the Merit-Based Selection Criteria for Dispensaries/Retail Sales. The final Merit-Based Criteria, adopted Resolution, City Council reports, and presentations are available for download below.

Planning Commission Public Hearings (October/November 2017)

Draft Ordinance regarding Cannabis Businesses in Merced. A public hearing before the Planning Commission was held on Wednesday, October 18, 2017, but due some technical issues with the appointment of one of our Planning Commissioners, the public hearing was rescheduled for Wednesday, November 8, 2017, for the Planning Commission to make a recommendation to the City Council on the Draft Ordinance. After the public hearing, the Planning Commission recommended to the City Council by at 5-1-1 (5 ayes, 1 no, 1 abstain) vote to approve the Ordinance as proposed with the addition of dispensaries in the Light Industrial (I-L) zone.

Community Outreach

A number of public meetings have been held thus far to give input into the process of developing an ordinance and selection process for future medical marijuana businesses in the City. A study session on Proposition 64 was held for the City Council on April 17, 2017 (presentation available for download below). A Community Outreach meeting on medical marijuana issues in the City was held on May 9, 2017 (presentation and flyer available for download below). A study session with the Planning Commission and City Council was held on July 5, 2017 (presentation is available for download below). A second Stakeholder and Community meeting was held on July 12, 2017 (flyer and presentation available for download below).

A Study Session with the City Council and Planning Commission was held on September 12, 2017. See below to download a copy of the agenda packet, which included a DRAFT ordinance (since revised, please refer to the November 8 Planning Commission packet), as well as the presentation. The City Council and Planning Commission gave staff direction for modifications to the ordinance which would allow more commercial cannabis businesses in the City, including commercial cultivation, manufacturing, distribution, and adult use dispensaries/retail sales as well as the medical dispensaries.

Preparation of Operating and Licensing Regulations for Cannabis Dispensaries

In February 2017, the City of Merced hired SCI Consulting, Inc., to assist the City with the preparation of the operating and licensing regulations for the medical marijuana dispensaries.

Development Services - Planning - Cannabis - 00a--Application Forms & Schedules

1-NEW Annual Renewal of CCBP--All Types--Application Form File Name: Annual Renewal of All CCBP Application R2.pdf

Revision Date: 10/4/2018

More Info

2-Application Filing Fees File Name: Cannabis Fee Schedule-Updated 2019.pdf More Info Revision Date: 12/18/2018 3-CCBP Frequently Asked Questions **More** File Name: Commercial Cannabis Business Permit FAQ worksheet V2.pdf Info Revision Date: 3/21/2018 Commercial Cannabis Business Permits Information Sheet (2019) **More** File Name: Cannabis Attraction Flyer Update2019.pdf Info Revision Date: 12/21/2018 **Cultivation Application Packet** File Name: Commercial Cultivation Cannabis Application - Final Packet-1-31-18.pdf More Info Revision Date: 1/31/2018 Dispensary/Retail Sales Application Packet More File Name: Commercial Retail Sales Cannabis Application- Final Packet-1-31-18.pdf Info Revision Date: 1/31/2018 Distribution Application Packet File Name: Commercial Distribution Cannabis Application - Final Packet-1-31-18.pdf More Info Revision Date: 1/31/2018 Environmental Review Checklist--Needs to Be Submitted with All Applications More File Name: Environmental Review Checklist.pdf

Revision Date: 1/29/2018

Info

Indemnity Agreement More File Name: CCBP Indemnity Agreement.pdf Info Revision Date: 1/26/2018 Live Scan Forms More File Name: Live Scan BCII_8016.pdf Info Revision Date: 2/21/2018 Live Scan Locations and Instructions More File Name: Live Scan Locations_REVISED for Cannabis .pdf Info Revision Date: 3/8/2018 Manufacturing Application Packet More File Name: Commercial Manufacturing Cannabis Application -Final Packet-1-31-18.pdf Info Revision Date: 1/31/2018 **Testing Application Packet** More File Name: Commercial Testing Cannabis Application -Final Packet-1-31-18.pdf Info Revision Date: 1/31/2018

Web-Tool for Sensitive Uses Flyer

File Name: Merced Web App for Sensitive Uses Flyer.pdf

Revision Date: 2/21/2018

More

Zoning Verification Form
File Name: Zoning Verification Form R5 - Final.pdf
Revision Date: 1/26/2018

<u>More</u> <u>Info</u>

Development Services - Planning - Cannabis - 00b--January 26, 2018 Application Workshop Materials

	Application Workshop Flyer ReminderJanuary 26, 2018 File Name: Jan 26-2018 Application Workshop Flyer2.pdf Revision Date: 1/19/2018	More Info
В	Application Workshop FlyerJanuary 26, 2018 File Name: Jan 26-2018 Application Workshop Flyer.pdf Revision Date: 12/20/2017	<u>More</u> Info
23	Dates When Merced Will Be Accepting Cannabis Applications Handout File Name: Merced Application Dates Flyer.pdf Revision Date: 1/26/2018	More Info
	January 26, 2018 Application Workshop Agenda File Name: 01-26-18 Workshop AGENDA.pdf Revision Date: 1/26/2018	More Info
23	January 26, 2018 Application Workshop Presentation File Name: 01-26-2018Cannabis Application Workshop.pdf Revision Date: 1/26/2018	<u>More</u> Info
347	Request for Pre-Application Meeting Handout File Name: Request for pre-app meeting for cannabis business permit.pdf Revision Date: 1/26/2018	More Info

Workshop Questions Handout

File Name: Cannabis workshop questions.pdf

Revision Date: 1/26/2018

More Info

Development Services - Planning - Cannabis - 00c--Cannabis Tax Measure

01-Adopted Ordinance #2490 (Cannabis Tax Measure)

File Name: Cannabis Tax Ordinance No. 2490.pdf

Revision Date: 4/11/2019

More Info

Adopted Resolution (Consolidating Election)

File Name: Adopted Resolution 2018-11 (Consolidating Election).pdf

Revision Date: 2/22/2018

More Info

Adopted Resolution Calling the Election (Tax Ordinance is Exhibit B)--Amended 3-8-18

File Name: Resolution 2018-13 with Exhibits.pdf

Revision Date: 2/22/2018

More Info

City Council Admin Report on Tax Ordinance/Special Election--Feb 20, 2018

File Name: AR - Special Election (Commercial Cannabis Business Tax).pdf

Revision Date: 2/21/2018

More Info

City Council Admin Report--Feb. 5, 2018 on Cannabis Tax Options

File Name: AR - Options for Cannabis Tax Measure.pdf

Revision Date: 2/6/2018

More Info

More File Name: 3-8-18 CC Agenda Packet, pdf Info Revision Date: 3/9/2018 City Council Presentation-Feb 20, 2018 More File Name: 02-20-2018-CC--Cannabis Tax Ordinancea.pdf Info Revision Date: 2/21/2018 City Council Presentation--Feb. 5, 2018 on Cannabis Tax Options More File Name: 02-05-2018-CC--Cannabis Tax Options.pptx Info Revision Date: 2/6/2018 Development Services - Planning - Cannabis - 01--Revised Ordinance (Effective April 17, 2019) 00a-Revised Ordinance #2498 (Effective April 17, 2019; Replaces Ordinance #2480) More File Name: Ordinance 2498 Commercial Cannabis.pdf Info Revision Date: 4/4/2019 00b1--Resolution #2019-12--List of Schools More File Name: Resolution 2019-12--List of Schools.pdf Info Revision Date: 4/4/2019 00b--Adopted Cannabis Ordinance #2480 (Effective January 3, 2018) More File Name: Ordinance 2480 - Cannabis.pdf Info Revision Date: 12/6/2017

City Council Admin Report--Special Meeting (March 8, 2018)

00c--Summary of Adopted Cannabis Ordinance File Name: Summary of Adopted Merced Ordinance-12-5-17.pdf More Info Revision Date: 12/6/2017 Commercial Cannabis Business Permit Process Flowchart File Name: Cannabis Permit Flowchart and Disclaimer revised 10-26-2017.pdf More Info Revision Date: 11/6/2017 Development Services - Planning - Cannabis - 02--Cannabis Fees (Adopted Dec. 18, 2017) Adopted Resolution #2017-67 (Cannabis Fees) More File Name: Resolution 2017-67.pdf Info Revision Date: 12/20/2017 Cannabis Regulatory Fees Background Report (December 2017) More File Name: City of Merced Cannibus Regulatory Fees 2017.pdf Info Revision Date: 1/8/2018 City Council Administrative Report (December 18, 2017) **More** File Name: AR- Cannabis Permit Fees & Regulatory Fees Adoption.pdf Info Revision Date: 12/20/2017

City Council Presentation (December 18, 2017)
File Name: 12-18-2017 Public Hearing-CC Presentation-Cannabis Fees.pdf
Revision Date: 12/20/2017

More Info Public Hearing Notice for Establishment of Cannabis Fees (Dec. 18, 2017)

File Name: CC PHN -Cannabis Fees-Dec18-2017 (002).pdf

Revision Date: 12/6/2017

<u>More</u> Info

Development Services - Planning - Cannabis - 03--Merit-Based Selection Criteria (Jan. 2 & 16, 2018)

Adopted City Council Resolution #2018-01

File Name: Resolution 2018-01.pdf

Revision Date: 1/17/2018

<u>More</u> Info

Adopted Merit-Based Selection Criteria--Jan. 16, 2018

File Name: Merit Based Selection Criteria for Merced R8--CC Adopted-01-16-18.pdf

Revision Date: 1/17/2018

More Info

City Council Administrative Report--Jan. 16, 2018

File Name: AR - Merit Based Criteria for CCBPs.pdf

Revision Date: 1/17/2018

More Info

City Council Administrative Report-Jan. 2, 2018

File Name: AR - Adoption of Merit-Based Criteria for CCBP.pdf

Revision Date: 12/27/2017

More Info

City Council Presentation--Jan. 16, 2018

File Name: 01-16-2018-CC Presentation-Merit Based Criteria--Final.pdf

Revision Date: 1/17/2018

More Info City Council Presentation--Merit-Based Criteria-Jan2-2018

File Name: 01-02-2018-CC Presentation-Merit Based Criteria.pdf

Revision Date: 1/8/2018

More Info

Development Services - Planning - Cannabis - 04--City Council Public Hearings (Nov/Dec 2017)

01--City Council Presentation--11-20-17

File Name: 11-20-2017 Public Hearing ZOA #17-01 CC Presentation-Cannabis Businesses-

Reduced.pdf

Revision Date: 11/21/2017

More Info

02--City Council Administrative Report--11-20-17

File Name: AR-ZOA #17-01 (Commercial Cannabis Ordinance).pdf

Revision Date: 11/21/2017

More Info

03--Administrative Report for 2nd Reading of Cannabis Ordinance--CC 12-4-17

File Name: AR - second reading for Cannabis Businesses Ordinance-12-4-17.pdf

Revision Date: 11/29/2017

More Info

Development Services - Planning - Cannabis - 05--Planning Commission Public Hearings (Oct/Nov 2017)

03--Planning Commission Staff Report for Nov. 8, 2017 (Includes Draft Ordinance at

Attachment A)

More

File Name: Item 4.3 (Addendum)- ZOA 17-01-Cannabis Businesses Ordinance (draft).pdf

Revision Date: 11/6/2017

Info

More File Name: PC 11-08-2017 PHN-ZOA 17-01-Cannabis.pdf Info Revision Date: 11/6/2017 Planning Commission Public Hearing Notice--Oct 18, 2017 More File Name: PC PHN 10-18-2017 (ZOA #17-01 Cannabis Ordinance).pdf Info Revision Date: 10/11/2017 Planning Commission Study Session Packet--Oct. 11, 2017 **More** File Name: PDF of PC Packet 10-11-2017 Special Meeting.pdf Info Revision Date: 10/11/2017 Planning Commission Study Session Presentation-Cannabis Businesses in Merced-PC10-11-2017 More File Name: 10-11-2017 Study Session ZOA #17-01 PC Presentation-Cannabis Businesses.pdf Info Revision Date: 10/12/2017 Development Services - Planning - Cannabis - 06--Community Meetings & Study Sessions (April-Sept 2017) City Council/Planning Commission Study Session Packet-9-12-17 More File Name: 9-12 Agenda Packet.pdf Info Revision Date: 9/14/2017 City Council/Planning Commission Study Session Presentation--9/12/17 More File Name: PC-CC Study Session Presentation--Sept 12 2017.pdf Info Revision Date: 9/14/2017

Planning Commission Public Hearing Notice--November 8, 2017

В	Community Outreach Meeting Flyer-May 9, 2017 File Name: City of Merced community outreach meeting May 9 2017 without images.pdf Revision Date: 4/27/2017	More Info
	Presentation to City Council on Prop 64April 17, 2017 File Name: Proposition 64 Presentation for April 17 2017 R1 (002).pdf Revision Date: 4/28/2017	More Info
[ð	PresentationCommunity MeetingMay 9, 2017 File Name: Community Meeting Presentation for May 9 2017.pdf Revision Date: 7/13/2017	More Info
0	PresentationPlanning Commission/City Council Study SessionJuly 5, 2017 File Name: Discussion of Merced Ordinance Elements July 5 2017.pdf Revision Date: 7/13/2017	More Info
	PresentationStakeholders & Community MeetingJuly 12, 2017 File Name: Stakeholder Meeting July 12 2017.pdf Revision Date: 7/13/2017	<u>More</u> <u>Info</u>
D	Stakeholder & Community Meeting FlyerJuly 12, 2017 File Name: Stakeholder-Public Mtg Flyer-07-12-17.pdf Revision Date: 7/13/2017	More Info

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August 12, 2019

VIA E-MAIL & U.S. MAIL

Merced City Council C/O Michael Hren, Principal Planner 678 W. 18th Street, Merced, CA 95340 HrenM@cityofmerced.org

Harvest of Merced, LLC's Reply to Appeal by Jiva Life, LLC of Commercial Cannabis Business Permit #18-14R

1. <u>This Appeal Is Not Against Resolution #4021 Approving CCBP #18-14R - It Is An</u> <u>Untimely Masked Appeal Of Ordinance 2498</u>

Though Jiva Life, LLC ("Jiva Life") claims the appeal it filed on June 13, 2019 is an appeal against the June 5, 2019 City of Merced Planning Commission Resolution #4021 that approved Harvest of Merced, LLC's ("Harvest") Commercial Cannabis Business Permit ("CCBP") #18-14R, actually it is an appeal against Ordinance 2498.

Tellingly, not one of the various reasons mentioned in the appeal relate to or mention anything that actually transpired or failed to occur at the June 5, 2019 Planning Commission hearing. Rather, the appeal cites only to pre-June 5, 2019 actions taken by the City Council or the Planning Commission, or it alleges conjectured and unsubstantiated pre-June 5, 2019 acts of favoritism supposedly bestowed upon Medallion Wellness ("Medallion") and/or Harvest.

As such, Jiva Life's appeal is actually a disguised appeal against Ordinance 2498 that is based upon alleged events that took place months before June 5, 2019. For this reason, Jiva Life's appeal is untimely, an issue that will be discussed below in more detail.

2. <u>Since The Planning Commission Approved Ordinance 2498 On January 23, 2019, Jiva Life's Appeal Was Filed More Than Five Months Late</u>

In the last sentence of the first page of its appeal, Jiva Life states: "The Council should not rewrite the Code [referring to Ordinance 2498] to benefit a single entity that was previously disqualified because it was located too close to a school." Pursuant to Merced Municipal Code Section 20.74.030(B), an objection to Ordinance 2498 required an appeal to be filed with the

City Council within 5 business days of the Planning Commission's approval of Ordinance 2498. Since the Planning Commission approved Ordinance 2498 at its January 23, 2019 hearing, any appeal had to filed on or before January 31, 2019. The record is void of Jiva Life filing such an appeal.

Instead, the record reflects that Rajiv Pottabathni, the Principal and Managing Director of Jiva Life appeared at the February 19, 2019 City Council hearing. Mr. Pottabathni made public comments opposing Ordinance 2498 stating that the ordinance favors one applicant, violates and circumvents procedural due process, creates an unfair advantage by creating a fifth applicant, and allowing for lot line adjustment by CCBP applicants. His public comments can be viewed at: http://cityofmerced.granicus.com/MediaPlayer.php?view_id=1&clip_id=276 beginning at 2 hours, 5 minutes of the recorded hearing and ending at 2 hours, 10 minutes, 25 seconds (2:05:00 to 2:10:25).

After Mr. Pottabathni's comments at the February 19, 2019 City Council hearing, the record shows no action was taken by Jiva Life until it filed the June 13, 2019 appeal - an appeal that was filed over five months late.

3. <u>Jiva Life Has Even Missed Its 90-Day Time Limit To File A Petition For Writ Of Mandate To Invalidate Ordinance 2498</u>

Not only has Jiva Life failed to file a timely administrative appeal to contest the validity of Ordinance 2498, Jiva Life has also missed its 90-day time limit to file a lawsuit seeking a Writ of Mandate to invalidate Ordinance 2498 on legal grounds (See, California Code of Civil Procedure § 1094.6(b) "Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final."). Pursuant to Merced Municipal Code 20.74.030(G), Ordinance 2498 became final on March 18, 2019, as soon as the City Council rendered its final approval. Merced Municipal Code 20.74.030(G) states the following:

Effective Date of Appeal Decisions. City Council Decisions. A decision of the city council is final and shall be effective on the date the decision is rendered.

Since the City Council approved Ordinance 2498 on March 18, 2019, Jiva Life would have had to file its lawsuit for Writ of Mandate on or before June 17, 2019, or ninety days after March 18, 2019. The record is void of Jiva Life filing such a lawsuit. As a result of the statute of limitations noted above, Jiva Life is now barred from filing a legally valid lawsuit against Ordinance 2498.

4. There Was No Final Denial Of CCP #18-14R

In its appeal, Jiva Life conveniently ends its background review of the procedural history on November 14, 2018. However, crucial proceedings occurred after November 14, 2018 that Jiva Life omits from the record. Harvest will now complete the record.

First of all, Jiva Life incorrectly lists the November 14, 2018 hearing as a hearing of the City Council, when in fact it was actually a Planning Commission hearing. At the November 14, 2018 Planning Commission hearing, the Planning Commission determined that the Wolfe

Education Center met the definition of a school, that the Harvest location was within 1,000 feet of a school and therefore denied CCBP #18-14R.

Thereafter, Harvest filed a timely appeal of the November 14, 2018 Planning Commission determination and its appeal was heard by the City Council on December 23, 2018. At the December 23, 2018 appeal hearing, the City Council reversed the Planning Commission's denial of CCBP #18-14R and remanded the issue back to the Planning Commission.

In between the time of this remand order by the City Council and the next appearance that was set for Harvest at the Planning Commission, on March 18, 2019, the City Council approved Ordinance #2498. Nearly three months later, on June 5, 2019, the Planning Commission approved CCBP #18-14R.

Jiva Life incorrectly alludes to a final denial when it states in section I, A of its appeal that: "The Commission Denied Harvest The Permit Because Harvest Was Located Within 1,000 Feet Of A School." There was no final denial of CCP #18-14R. Rather, what actually occurred on June 5, 2019 was the Planning Commission undertook the remanded Harvest issue as directed by the City Council. At that hearing of June 5, 2019, the Planning Commission properly applied the law and voted to approve CCBP #18-14R.

5. The City Did Not Rewrite The Code To Change How Harvest Measured Its Distance To The School, Nor Did The City Award A Fifth Permit So Medallion Would Not Object To Harvest's Permit – The City Rewrote The Code To Best Protect Its Residents.

Jiva Life alleges conjectured and unsubstantiated acts of favoritism supposedly bestowed upon Medallion and Harvest that occurred back on March 4, 2019. These include allegations to change how Harvest measured its distance to the Wolfe Center, as well as awarding a fifth CCBP to Medallion to buy its silence. In its appeal Jiva Life loosely claims that:

Without providing any explanation why, as part of Ordinance Number 2498, the City increased the number of Cannabis Permits from four to five by amending Code section 20.44.170(F)(1) accordingly. The only apparent explanation why the City chose to increase the number of Cannabis Permits it was awarding was so Medallion - the fifth ranked applicant - would receive a permit and would withdraw its objection to the Harvest Permit. (Page 3 to 4 of Jiva Life Appeal).

The truth of the matter is quite different. First of all, Medallion never withdrew its objection to the Harvest permit. Second, at the February 19, 2019 hearing, Mayor Mike Murphy provided a sound and well-reasoned explanation to Mr. Pottabathni as to why the City Council was revising the ordinance. Note that Mr. Pottabathni was the only person from the public to speak regarding Ordinance 2498. So in the quote below, when reference is made "To the point during public hearing," the Mayor is referring to the comments made by Mr. Pottabathni.

To the point during the public hearing about the comment regarding not ever changing or revising the ordinance - our job is to protect our residents and when we are talking about sensitive uses we are going to make sure it fits for the best protection of our residents and sometimes that merits change. I just want to

make sure that is clear and that is part of our responsibility and our prerogative up here. (http://cityofmerced.granicus.com/MediaPlayer.php?view_id=1&clip_id=276 beginning at 2 hours, 13 minutes (2:013:00)

Once again, Mr. Pottabathni and his attorney are carelessly making unsubstantiated allegations with no basis in fact – the actual record contrasts mightily to this reoccurring defect.

6. The City Did Not Show Favoritism To Harvest In The Permit Selection Process

Lastly, Jiva Life contends that the City of Merced failed to implement its cannabis permit process in a uniform and objective manner. In support of this argument, once again Jiva Life can only allege conjectured and unsubstantiated reasons. This is clearly demonstrated when it states:

For some subjective reason, Harvest was allowed special dispensation and was awarded the Permit in spite of the Code's requirements. To accomplish that end, the City modified the permitting and application process mid-stream so that Harvest could amend its Permit application and further allowed Harvest to artificially change how distance to the Center would be measure. [sic] (Appeal, p 5)

What Jiva Life fails to note, is that the codes they are complaining about apply to <u>all</u> CCBP applicants, not just to Harvest. These codes apply equally to Jiva Life, Medallion, Harvest, and all the other 19 cannabis applicants. It is noteworthy that nowhere in its six-page appeal does Jiva Life cite to an actual section of the Merced Municipal Code to show how the code unfairly applied only to Harvest and to the exclusion of the other 21 cannabis applicants. The reason no citation was made by Jiva Life is simple to explain. No such favoritism exists.

CONCLUSION

The appeal filed by Jiva Life is frivolous and void of probable cause. Jiva Life is relying upon facts it has no reasonable cause to believe to be true and is also seeking recovery upon legal theories that are untenable under the facts known to it. Actually, Jiva Life initiated this appeal solely for the purpose of depriving Harvest of its rightful and beneficial use of its property.

Furthermore, for the reasons set forth above, it is apparent that the attorney for Jiva Life neglected to reasonably investigate the facts and law of this matter before filing this appeal. Yet on top of all these serious shortcomings, Jiva Life has the gall to assert that it should be awarded Harvest's cannabis permit. The City Council should treat this appeal for what it is by issuing a decision based on the facts and the record - and not on Jiva Life's unsubstantiated conjecture!

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP

Douglas Smurr

Attorneys for Harvest of Merced, LLC

PROOF OF SERVICE

Re: Appeal by Jiva Life, LLC of Commercial Cannabis Business Permit #18-14R

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 3 Parkcenter Drive, Suite 200, Sacramento, California 95825 . On the date below, I served the following document/s:

Harvest of Merced, LLC's Reply to Appeal by Jiva Life, LLC of Commercial Cannabis BUSINESS Permit #18-14R

	Cannabis BUSINESS Permit #18-14R	
	by transmitting via facsimile the document(s) forth below on this date before 5:00 p.m.	listed above to the fax number(s) set
	by personally delivering the document(s) listed messenger to the person(s) at the address(es) s	
X	by placing the document(s) listed above in a set fully prepaid, in United States mail in the State as set forth below.	
	Merced City Council C/O Michael Hren, Principal Planner 678 W. 18 th Street, Merced, CA 95340	Jeffrey H. Belote, Esq. CLARK HILL, LLP One Embarcadero Center, Suite 400 San Francisco, CA 94111 Attorneys for Jiva Life, LLC
is tru	I declare under penalty of perjury under the late and correct. Executed on August 12, 2019, at Sacramento	
		/S/
		Elizabeth Scott

NOTICE O	F EXEMPTION		
То:	Office of Planning an P.O. Box 3044 Sacramento, CA 9581		City of Merced 678 West 18th St. Merced, CA 95340
<u>X</u>	County Clerk County of Merced 2222 M Street Merced, CA 95340		
Project Title:	Commercial #18-27)	Cannabis Business Permit	Application #18-14R (Environmental Review
Project Appli	cant: Harvest of M	ferced, LLC.	
Project Locat	tion (Specific): 863 \	W. 15 th Street (APN: 031-17	73-012)
Project Locat	tion - City: Merce	ed Project L	ocation - County: Merced
			et: The project involves the application for a e cannabis, all in accordance with state and loca
Name of Publ	ic Agency Approvin	ng Project: City of Mo	erced
Name of Pers	on or Agency Carry	ring Out Project: Harvest of	of Merced, LLC.
Dec Em X_Cat as in-fill Stat	nisterial (Sec. 21080(b) clared Emergency (Sec ergency Project (Sec. 2 egorical Exemption. S development;	. 21080(b)(3); 15269(a)); 21080(b)(4); 15269(b)(c)); tate Type and Section Numbe	r: Section 15332, Class 32 – Projects characterized
15332 Class 32 (a) The project i with applicable site of no more endangered, rare	consists of projects ches consistent with the approximation and than five acres substate or threatened species	paracterized as in-fill developments of the general plan designand regulations; (b) The propose intially surrounded by urbant; (d) Approval of the project	vironmental Quality Act (CEQA), Guidelines Section ment meeting the conditions described in this section and all applicable general plan policies as welled development occurs within city limits on a projecuses; (c) The project site has no value as habitat f would not result in any significant effects relating adequately served by all required utilities and publications.
Lead Agency:			G 1 (F) 1 (200) 205 (250
Contact Perso Signature:	- 1	<i>)</i>	Code/Telephone: (209) 385-6858 Title: Principal Planner
X Signed by I	Lead Agency	Date Received for Filing at (If applicable)	OPR:

Authority Cited: Sections 21083 and 21110. Public Resources Code Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

City of Merced Merit Based Selection Criteria for Commercial Cannabis Business Permits Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th

		Selec	Selection Committee Scores	e Scores
<u>Description of Criteria:</u>	Points Possible	Reviewer #1	Reviewer #2	Reviewer #3
Section 1: Prioritize Medicinal Cannabis Access				
a) Proposal for combined medicinal/adult use dispensary	4	4	4	4
b) Proposal for medicinal only dispensary	8	0	0	0
c) Proposal for non-medicinal/adult use dispensary only	0	0	0	0
d) Proposal includes Delivery Services	2	7	2	2
Section 1: Sub-Total of Points Possible	9	9	9	9
Section 2: Geographical Preference/Neighborhood Relations				
a) Proposed locations is within 1,200 feet of local public transportation	1	T	1	1
b) Proposal includes a process and schedule for at least two public outreach meetings per year that meet City approval	7	7	2	2
 business plan includes a schedule for communication and receiving feedback from all entities within 300 feet of the business at least two times a year 	7	7	2	2

	Section 3: Facility Plan				
	a) Business is formally associated with a non-retail cannabis or non-cannabis-related business in the City of Merced	2	2	2	7
ΔΤΊ	b) Proposal includes daily inspection to ensure maintenance of the interior and exterior of the facility (i.e. free of trash, graffiti, etc.)	2	2	2	7
ГΔ	c) Location exceeds City parking requirements by 10% or more	1	1	1	Τ
C	d) Business is open more than five days a week at least 6 hours per day	1	1	1	1
4 V	e) Location exceeds minimum disabled parking requirements by 100% or more	1	1	1	T
1FN	f) Location is within an existing building or facility with an ability to be open for business within 6 months of approval of the CCBP by the City	1	1	1	τ
т	Section 3: Sub-Total of Points Possible	8	8	8	8
1					

d) Proposal includes the appointment of an employee as a designated liaison with the neighborhood

e) Designated liaison employee is a City resident

Section 2: Sub-Total of Points Possible

City of Merced Merit Based Selection Criteria for Commercial Cannabis Business Permits Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th

Selection Committee Scores

		2000		250153
Description of Criteria:	Points Possible	Reviewer #1	Reviewer #2	Reviewer #3
Section 4: Standards and Procedures for the Safe Operation of Facilities:				
a) Proposal includes documented employee safety training program	1	1	1	
b) Proposal includes documented employee cannabis educational training program	1	1	1	
c) Business Plan includes enhanced security measures, including at least three of the following: panic buttons, dye packets, bulletproof window film (with break strength of 400 lbs. per inch or better), a UL-approved safe with a fire rating that is 2-hour 1700 degrees F or better with a complex locking device; motion sensing lighting; or other enhanced security measures acceptable to the City. (0 to 4 points to be awarded at the discretion of the City Selection Committee.)	0 to 4	4	4	4
d) Proposal includes climate controlled environment	1	1	1	I
e) Proposal includes plan for disposal of all solid waste based on best practices of State	1	1	1	1
f) Proposal includes a comprehensive documented process for 24-hour minimum response time to cannabis product recall notifications	2	7	7	7
g) Proposal includes more than one on-site security guard during business hours	2	7	7	7
h) Proposal includes plans and procedures for how all cannabis products on the premises or held by the applicant have met the testing requirements as defined by the State	1	1	1	1
i) Proposal includes a separate lobby area where identification is checked to ensure that only qualified individuals gain access to separate, locked areas where cannabis products are displayed	2	2	2	2
 j) Proposal includes electronic storage of required records of sales, delivery manifests, patient information (if medicinal and required by State), inventory, etc., which can be provided to City personnel upon request 	2	7	7	2
k) Proposal includes participation in web-based public safety application or equivalent that provides law enforcement with confirmation of local and state licenses	1	1	1	1
 I) Proposal includes any proposed "green" business practices relating to energy and climate, water conservation, and materials/waste storage 	1	1	1	1
m) Proposal includes secured loading/unloading area for deliveries	1	1	1	1
Section 4: Sub-Total of Points Possible	20	20	20	20

City of Merced Merit Based Selection Criteria for Commercial Cannabis Business Permits Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th

Selection Committee Scores

		Select	Selection Committee Scores	e Scores
Description of Criteria:	Points Possible	Reviewer #1	Reviewer #2	Reviewer #3
Section 5: Prior Experience in Business Ownership and Management				
a) Combined prior experience of proposed owners is more than 3 years of verified successful management of any non-cannabis legal retail facility	2	2	7	7
 b) Combined prior experience of proposed owners is more than 1 year and up to 3 years with a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law and with proof of payment of taxes 	2	7	7	7
c) Combined prior experience of proposed owners is more than 3 years and up with a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law and with proof of payment of taxes	3	8	8	8
d) Above prior experience was obtained within the City or County of Merced	3	3	8	8
e) Above prior experience was obtained within 100 miles of the City of Merced	1	1	1	T
Section 5: Sub-Total of Points Possible	11	11	11	11
Section 6: Qualifications of Principals/Business Plan				
a) At least one owner is a military veteran with an honorable discharge	1	0	0	0
b) At least one owner is a full-time resident of the County of Merced	1	1	1	Τ
c) At least one owner is a full-time resident of the City of Merced	2	2	2	7
d) Does the business qualify as a Disadvantaged Business Enterprise (DBE) as defined by the U.S. Department of Transportation?	1	0	0	0
e) Does the business have documented proof of access to at least \$150,000 in capital (or enough capital to pay all startup costs plus at least 3 months of operating costs)?	3	3	8	ε
f) Does the business have documented proof of access to at least \$300,000 in capital (or enough capital to pay all startup costs plus at least 6 months of operating costs)?	3	3	3	8
g) Business Plan contain a valid pro forma for at least 3 years of operation	2	2	2	7
h) Business has documented agreements with cannabis distributors to supply products to their business	7	2	7	7
Section 6: Sub-Total of Points Possible	15	13	13	13

City of Merced Merit Based Selection Criteria for Commercial Cannabis Business Permits

Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th

	4		95.000	AVERAGE OF SELECTION COMMITTEE SCORES (Total ÷ 3)
	RANKING		285	TOTAL OF SELECTION COMMITTEE SCORES
94	93	86	100	TOTAL POINTS POSSIBLE
16	15	20	20	Section 9: Sub-Total of Points Possible
16	15	20	0 to 20	 a) 0 to 20 additional points may be awarded to a proposal for outstanding features, measures, or programs (above and beyond the minimum requirements) proposed in the Commercial Cannabis Business Permit Application at the discretion of the City Selection Committee.
				Section 9: Discretion of the City Selection Committee
5	5	2	5	Section 8: Sub-Total of Points Possible
5	2	2	0 to 5	a) Proposal includes benefits to the community, such as defined monetary contributions to local community organizations, or donating time to local community organizations, or any other proposed community benefit acceptable to the City. (0 to 5 points to be awarded at the discretion of the City Selection Committee.)
				Section 8: Community Benefits
8	8	8	8	Section 7: Sub-Total of Points Possible
2	2	2	2	d) Proposal includes an ongoing public information program to inform City residents of cannabis issues and proper/safe/legal use of cannabis products
2	2	2	2	 c) The business employs more than 5 people full-time, not counting the owners or security personnel
2	2	2	2	b) The business provides employee health benefits for all employees
2	2	2	2	a) The business promotes local hiring or provides incentives for City/County of Merced residents to work with the business
				Section 7: Employee & Public Relations
Reviewer #3	Reviewer #2	Reviewer #1	Points Possible	<u>Description of Criteria:</u>
e Scores	Selection Committee Scores	Selec		



NON-LIMITED ACCESS AREAS

LOBBY

The lobby will be the sole entrance to the dispensary facility that will be accessible to persons who are not authorized employees of Harvest. In this lobby consumers, visitors, contractors,

and members of the Bureau, law enforcement, or other relevant state and local authorities will check-in with the Security Guard on duty before being granted access to any other area of the dispensary facility. Identification for all visitors will be checked to ensure that only qualified individuals are allowed access to the separate, locked retail area where cannabis products are displayed and sold.



Example of fully constructed Harvest Lobby Area

Patrons will only be granted access to the retail area after Harvest has verified that the consumer is at least twenty-one (21) years of age and has a valid proof of identification or that the individual is at least eighteen (18) years of age, has valid proof of identification, and a valid physician's recommendation for themselves or for a person for whom they are a primary caregiver. Valid proof of identification will clearly indicate the age or birthdate of the consumer or caregiver, as described in the Security section of this application. Individuals will not be permitted to remain on the premises if they will not be engaging in express activity related to the operations of Harvest.

RETAIL AREA

Cannabis and cannabis goods will be sold and displayed behind the sales counter in the Retail Area. This area will be accessible to employees, verified consumers, authorized representatives of the Bureau and other government officials, and authorized tradespeople when necessary to perform their job duties. At least one (1) Harvest Wellness Representative or other employee will be physically present in the retail area at all times when consumers or other authorized individuals are in the retail area. Our policy is to require at least one (1) Wellness



Representative for every two patrons in the Retail Area. After a patron purchases their cannabis goods, they will be required to immediately leave the retail area.



Examples of fully constructed Harvest Retail Area



EQUIPMENT STORAGE AREA

The dispensary facility includes a 16 foot x 16 foot accessory building structure. This building will remain on the property and part of the premises and be used for the storage of equipment, utensils, and cleaning supplies. Under no circumstances will cannabis be stored or possessed in the equipment storage area.

RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, GRANTING COMMERCIAL CANNABIS BUSINESS PERMIT #18-14R TO ALLOW HARVEST OF MERCED, LLC. TO OPERATE A RETAIL DISPENSARY FOR MEDICINAL AND ADULT USE CANNABIS AND CANNABIS-RELATED PRODUCTS, INCLUDING DELIVERY SERVICES, AT 863 W. 15TH STREET, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

WHEREAS, the Planning Commission of the City of Merced ("Planning Commission") at its meeting of June 5, 2019 held a public hearing and considered Commercial Cannabis Business Permit # 18-1 4R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services, at 863 W. 15th Street (as shown on the map at Exhibit A); also known as Assessor's Parcel Number 031-073-012; and

WHEREAS, on June 5, 2019, the Planning Commission, after hearing all evidence and testimony and after exercising its independent judgment, adopted Resolution #4021 approving Commercial Cannabis Business Permit # 1 8-14R subject to the findings and conditions attached thereto; and

WHEREAS, the Appellant (Jiva Life, LLC.) appealed the Planning Commission decision to approve Commercial Cannabis Business Permit #18-14R; and

WHEREAS, the Appellant (Jiva Life, LLC.) has not appealed the Planning Commission's decision to adopt a Categorical Exemption regarding Environmental Review # 18-27 (Categorical Exemption) in Resolution #4008, approved at a public hearing of the Planning Commission on September 19, 2019, which was later adopted by the City Council at a public hearing on October 5, 2018; and,

WHEREAS, the matter was scheduled for a de novo review pursuant to a public hearing before the City Council on August 5, 2019; however, the matter was continued, for good cause and pursuant to the agreement of the applicant and appellant, to September 3, 2019.

WHEREAS, the City Council held a de novo review pursuant to a duly noticed public hearing on September 3, 2019, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application and appeal.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council's adoption of Environmental Review #18-27 (Categorical Exemption), pursuant to the provisions of the California Environmental Quality Act remains in effect and is unaltered.

SECTION 2. CONSIDERATION. The City Council has considered all of the evidence submitted into the administrative record including, but not limited to:

- A. A location map of the proposed premises at 863 W. 15th Street
- B. An aerial map of the proposed premises
- C. A proposed floor plan
- D. Photographs of the existing site
- E. The City of Merced's official "List of Schools"
- F. City of Merced Ordinance #2498, amending Section 20.44.170, "Regulation of Commercial Cannabis Business Activities-Commercial Cannabis Business Permit Required," of the Merced Municipal Code
- G. A request to modify the pending permit application from Harvest of Merced and associated documentation
- H. Planning Commission Resolution #4021, approving Commercial Cannabis Business Permit #18-14R for Harvest of Merced

- I. Jiva Life, LLC's Appeal of Commercial Cannabis Business Permit #18-14R to Harvest of Merced, LLC, City of Merced Planning Commission Planning Commission Resolution #4021
- J. Harvest of Merced, LLC's Reply to Appeal by Jiva Life of Commercial Cannabis Business Permit #18-14R
- K. Environmental Review #18-27
- L. Merit Based Selection Criteria for Commercial Cannabis Business Permits: Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th
- M. Renderings of interior spaces for Harvest of Merced proposal
- N. Administrative report and attachments thereto
- O. Staff presentation

SECTION 3. FINDINGS. In view of all of the record evidence including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearing and based on the foregoing findings, and the reasons set forth in the Environmental Impact Report, the City Council, having conducted a de novo review, exercising its independent judgment and making its own decision finds, in its discretion, that all applicable findings and all applicable provisions of the Merced Municipal Code have been complied with. The City Council further finds the following:

- A. The proposed project complies with the General Plan designation of General Commercial (CG) and the zoning designation of General Commercial (C-G).
- B. The cannabis dispensary is not located within a 1,000-foot radius from a school or within 600-foot radius from a day care center, youth center, library or public park.
- C. The applicant has successfully passed the Phase 1 and Phase 2 selection process for a Commercial Cannabis Business Permit.

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- D. The proposed operations comply with operational requirements of M.M.C. 20.44.170.
- E. The project does not appear to create adverse impacts related to traffic or circulation.
- F. The project meets and/or exceeds the City's parking requirements per the Zoning Code.
- G. The project does not appear to create adverse impacts to the surrounding neighborhood.
- H. The project's security plan complies with the requirements of M.M.C. 20.44.170.
- I. Background checks on all owners have been performed to the satisfaction of the Chief of Police.

SECTION 4. DETERMINATION. The City Council determines that the evidence in the record constitutes substantial evidence to support the actions taken and the findings made in this Resolution. The City Council further determines that the facts stated in this Resolution are supported by substantial evidence in the record including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearing. There is no substantial evidence, nor other facts that detract from the findings made in this Resolution and the City Council expressly declares that it considered all evidence presented and reached these findings after due consideration of all evidence presented to it.

SECTION 5. COMMERCIAL CANNABIS BUSINESS PERMIT. The City Council hereby grants Commercial Cannabis Business Permit# 18-14R together with the findings set forth above, included in the administrative record and conditions of approval which are attached hereto as Exhibits "A".

SECTION 6. JUDICIAL REVIEW. The time in which to seek judicial review of this decision shall be governed by Code of Civil Procedure Section 1094.6. The City Clerk shall certify to the adoption of this Resolution, transmit copies of the same to the applicant, appellant and their respective counsel, if any,

together with a proof of mailing in the form required by law and shall enter a certified copy of this Resolution in the book of resolutions of the City.

regul	lar meeting held on	ADOPTED by the City C the day of	Council of the City of Merced at a 2019, by the following
	AYES:	Council Members:	
	NOES:	Council Members:	
	ABSENT:	Council Members:	
	ABSTAIN:	Council Members:	
			APPROVED:
			Mayor
ATTE STEV	EST: E CARRIGAN, C	ITY CLERK	
BY:	Assistant/Deputy (City Clerk	
(SEAI	L)		
APPR	OVED AS TO FOR	RM:	

RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, DENYING COMMERCIAL CANNABIS BUSINESS PERMIT #18-14R TO ALLOW HARVEST OF MERCED, LLC. TO OPERATE A RETAIL DISPENSARY FOR MEDICINAL AND ADULT USE CANNABIS AND CANNABIS-RELATED PRODUCTS, INCLUDING DELIVERY SERVICES, AT 863 W. 15TH STREET, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

WHEREAS, the Planning Commission of the City of Merced ("Planning Commission") at its meeting of June 5, 2019 held a public hearing and considered Commercial Cannabis Business Permit # 18-1 4R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services, at 863 W. 15th Street (as shown on the map at Exhibit A); also known as Assessor's Parcel Number 031-073-012; and

WHEREAS, on June 5, 2019, the Planning Commission, after hearing all evidence and testimony and after exercising its independent judgment, adopted Resolution #4021 approving Commercial Cannabis Business Permit # 1 8-14R subject to the findings and conditions attached thereto; and

WHEREAS, the Appellant (Jiva Life, LLC.) appealed the Planning Commission decision to approve Commercial Cannabis Business Permit #18-14R; and

WHEREAS, the Appellant (Jiva Life, LLC.) has not appealed the Planning Commission's decision to adopt a Categorical Exemption regarding Environmental Review # 18-27 (Categorical Exemption) in Resolution #4008, approved at a public hearing of the Planning Commission on September 19, 2019, which was later adopted by the City Council at a public hearing on October 5, 2018; and,

WHEREAS, the matter was scheduled for a de novo review pursuant to a public hearing before the City Council on August 5, 2019; however, the matter was continued, for good cause and pursuant to the agreement of the applicant and appellant, to September 3, 2019.

WHEREAS, the City Council held a de novo review pursuant to a duly noticed public hearing on September 3, 2019, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application and appeal.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council's adoption of Environmental Review #18-27 (Categorical Exemption), pursuant to the provisions of the California Environmental Quality Act remains in effect and is unaltered.

SECTION 2. CONSIDERATION. The City Council has considered all of the evidence submitted into the administrative record including, but not limited to:

- A. A location map of the proposed premises at 863 W. 15th Street
- B. An aerial map of the proposed premises
- C. A proposed floor plan

- D. Photographs of the existing site
- E. The City of Merced's official "List of Schools"
- F. City of Merced Ordinance #2498, amending Section 20.44.170, "Regulation of Commercial Cannabis Business Activities-Commercial Cannabis Business Permit Required," of the Merced Municipal Code
- G. A request to modify the pending permit application from Harvest of Merced and associated documentation
- H. Planning Commission Resolution #4021, approving Commercial Cannabis Business Permit #18-14R for Harvest of Merced

- I. Jiva Life, LLC's Appeal of Commercial Cannabis Business Permit #18-14R to Harvest of Merced, LLC, City of Merced Planning Commission Planning Commission Resolution #4021
- J. Harvest of Merced, LLC's Reply to Appeal by Jiva Life of Commercial Cannabis Business Permit #18-14R
- K. Environmental Review #18-27
- L. Merit Based Selection Criteria for Commercial Cannabis Business Permits: Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th
- M. Renderings of interior spaces for Harvest of Merced proposal
- N. Administrative Report and attachments thereto
- O. Staff presentation

SECTION 3. FINDINGS. In view of all of the record evidence including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearing, and the reasons set forth in the Environmental Impact Report, the City Council, having conducted a de novo review, exercising its independent judgment and making its own decision finds, in its discretion, that the proposed project does not meet all applicable provisions of the Merced Municipal Code

SECTION 4. DETERMINATION. The City Council determines that the evidence in the record constitutes substantial evidence to support the actions taken and the findings made in this Resolution. The City Council further determines that the facts stated in this Resolution are supported by substantial evidence in the record including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearing. There is no substantial evidence, nor other facts that detract from the findings made in this Resolution and the City Council expressly declares that it considered all evidence presented and reached these findings after due consideration of all evidence presented to it.

X:\Resolutions\2019\Planning\Updated Denial Resolution for CCBP #18-14R.docx

SECTION 5. COMMERCIAL CANNABIS BUSINESS PERMIT. The City Council hereby denies Commercial Cannabis Business Permit# 18-14R together with the findings set forth above, included in the administrative record and conditions of approval which are attached hereto as Exhibits "A".

SECTION 6. JUDICIAL REVIEW. The time in which to seek judicial review of this decision shall be governed by Code of Civil Procedure Section 1094.6. The City Clerk shall certify to the adoption of this Resolution, transmit copies of the same to the applicant, appellant and their respective counsel, if any, together with a proof of mailing in the form required by law and shall enter a certified copy of this Resolution in the book of resolutions of the City.

regula		OOPTED by the City Council he day of	•
vote:			
	AYES:	Council Members:	
	NOEG		
	NOES:	Council Members:	
	ABSENT:	Council Members:	
	ABSTAIN:	Council Members:	
		AP	PROVED:
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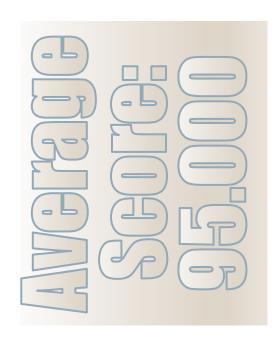
ATTEST: STEVE CARRIGAN, CITY CLERK
BY:
Assistant/Deputy City Clerk
(SEAL)
APPROVED AS TO FORM:
Thuedre Ce MA 8/14/19
City Attorney Date

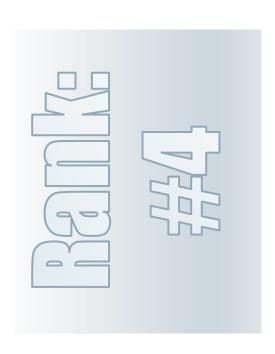
*Commercial Cannabis Business **Permit** #18-14R

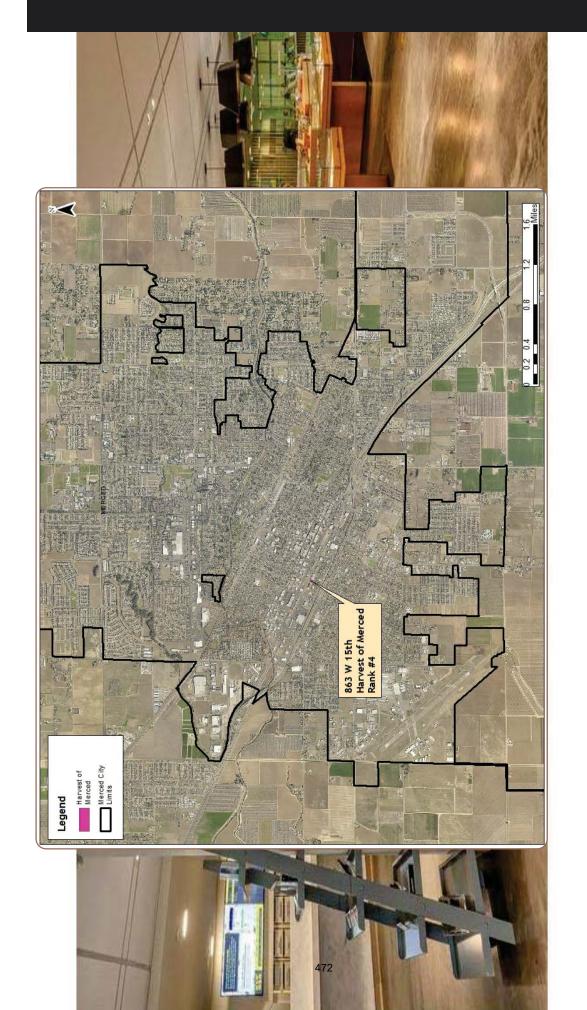
and adult use cannabis for Harvest of Merced, LLC. Retail dispensary Permit Application for Medicinal

Public Hearing: September 03, 2019

Harvest-Scoring







Context Map





Exhibit Showing Adjusted Parcels 863 W. 15th Street

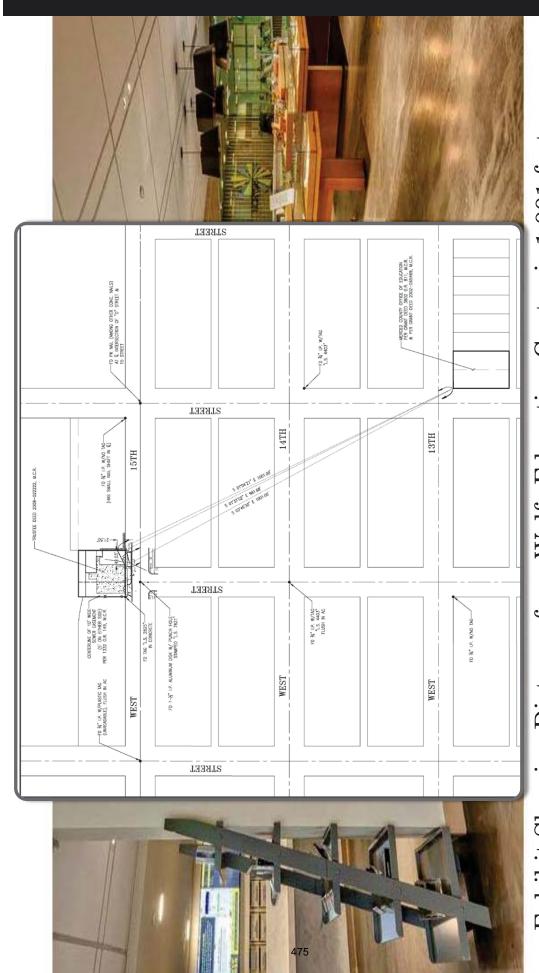
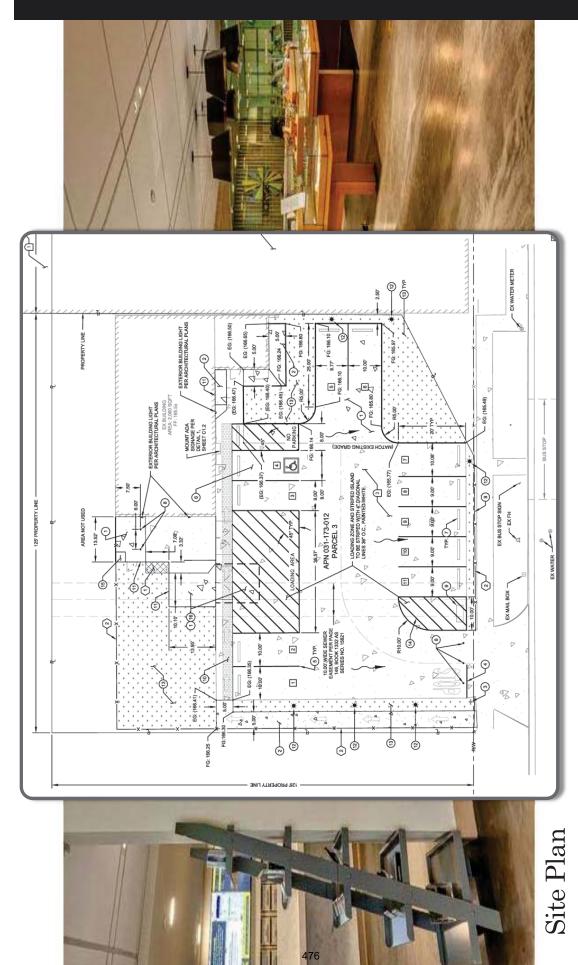
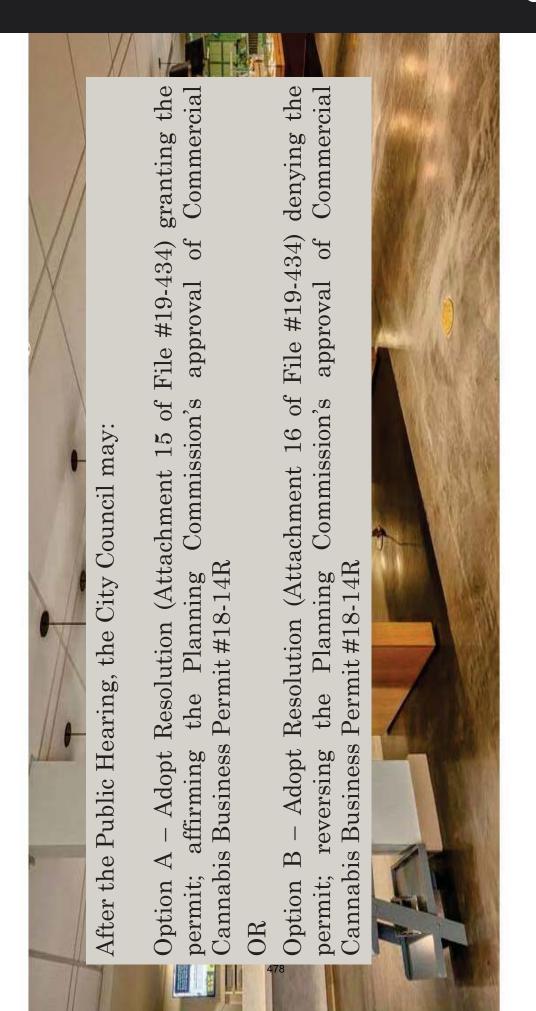


Exhibit Showing Distance from Wolfe Education Center is 1,001 feet 863 W. 15th Street



863 W. 15^{th} Street





City Council Action

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item J.1. Meeting Date: 9/3/2019

Report Prepared by: Phaedra A. Norton, City Attorney

SUBJECT: Acceptance of Court Approved Receivership Reimbursements, Appropriation of \$29,341 to the Substandard Housing Special Recovery Fund for Fiscal Year 19/20, and Authorization for Continuous Appropriation to Said Fund of Costs Recovered by the Code **Enforcement Task Force**

REPORT IN BRIEF

Authorizes acceptance and appropriation of reimbursements for City costs and fees from Courtapproved receiverships for public nuisance abatement pursuant to the Substandard Building Abatement Program in FY 19/20.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting reimbursements from the Court appointed Receiver and authorizing appropriation of \$29,341 to account 077-1005-522-29-00 (Substandard Housing Special Recovery) for FY 19/20; and,
- B. Authorizing any receipts of Substandard, Dangerous, or Nuisance abatement and cost recovery funds for FY 19/20 to be approved for appropriation on a continuous basis to the Substandard Housing Fund; 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 other than recommended by staff; or,
- 3. Deny; or,
- 4. Continue to a future meeting.

AUTHORITY

Charter of the City of Merced, Article XI. Fiscal Administration, Section 1105 Budget-Appropriations.

CITY COUNCIL PRIORITIES

This action is consistent with the City Council's priorities to address substandard properties within the City that pose immediate threats to health and public safety.

File #: 19-437 Meeting Date: 9/3/2019

DISCUSSION

The City is utilizing the California Health and Safety Code Receivership section to resolve difficult code enforcement matters in both commercial and residential areas. Receivership is a legal process through which control of real property is temporarily taken from the owner(s) and placed with a court-appointed officer-the Receiver. These receiverships are used for abandoned and substandard properties where the owner(s) has a history of noncompliance with the City's code enforcement efforts or, in emergency situations, where the real property presents an immediate threat to health and safety.

The receivership option is a comprehensive process that eliminates substandard conditions or uninhabitable slum-like properties and allows the referring agency, when it is the prevailing party, to recuperate its enforcement costs. This process also communicates to the public that the City is actively protecting residents and tenants from dangerous conditions created by absentee or non-responsive property owners.

In FY 18/19, the City entered into a Legal Services Agreement with Silver & Wright, LLP for code enforcement and receivership activities. Actions in these cases were paid for through the Substandard Building Abatement Program authorized by the City Council in FY 18/19. In FY 19/20, code enforcement and receivership activities are being handled in-house by the City Attorney's Office. Funding for the code enforcement and receivership activities in FY 19/20 is through receivership recovery funds only. Receivership cost recovery is not immediate and reimbursement can range from a few months up to a year. As such, the City was not in receipt of recovery funds prior to the approval of the FY 19/20 Budget in order to offset incurred legal expenses in FY 19/20.

In order to ensure prompt payment of future expenses and invoices, along with continued funding for the receivership program, it is recommended that an appropriation adjustment of \$29,341 received to date be approved and that additional reimbursements, if any, received in FY 19/20 be approved for appropriation on a continuous basis to the Substandard Housing Fund.

IMPACT ON CITY RESOURCES

Approval of the appropriation adjustment will designate \$29,341, as well as additional reimbursements in FY 19/20 to the Substandard Housing Fund.

ATTACHMENTS

1. Presentation

CODE ENFORCEMENT AND THE TASK FORCE

City of Merced Agencies as Joint Task Force: Police, Fire, Buildings and City Attorney's Office with the support of the City Manager and Council

CODE ENFORCEMENT COMMON COMPLAINTS

- Unmaintained Property, Overgrown lawns, trash, non-compliant vehicles
- Discarded furniture, appliances, mattresses
- Basketball hoops blocking sidewalks, left in street, nuisance
- Garbage cans left out in view
- General dilapidation, landlord unresponsive to repair requests
- Abandoned and boarded up homes/squatters
- Vehicles parking on the lawn
- Major Vehicle repairs in driveway or on yard

A DAY IN THE LIFE OF A CODE ENFORCEMENT OFFICER MAY NOT BE WHAT YOU THINK IT IS.....

AVERAGE CASELOAD PER YEAR

2016 THERE WERE 2000 CASES OPENED AND SERVICED WITH APPROXIMATELY 80% COMPLIANCE IN SIXTY DAYS AND OVER 400 VEHICLES ABATED

COMPLIANCE IN SIXTY DAYS AND NEARLY 500 VEHICLES ABATED. TASK FORCE WAS FORMED IN JULY AND THE TOP 100 PROPERTIES NEEDING ABATEMENT OF VIOLATIONS WERE IDENTIFIED AND ADDRESSED BY THE TASK FORCE. FIVE OF THESE NUISANCE PROPERTIES WERE ABATED BY THE CITY PRIOR TO YEAR END AFTER RECEIVING FUNDS 2017 THERE WERE 3455 CASES OPENED AND SERVICED WITH APPROXIMATELY 80% NECESSARY TO DO SO BY THE CITY COUNCIL

COMPLIANCE DATE/TIME OF THIRTY DAYS OR LESS AND NEARLY 300 VEHICLES ABATED. THE TASK FORCE GAINED VOLUNTARY COMPLIANCE ON MANY OF THE TOP 100 PROPERTIES AND THE CITY ABATED ONE SEVERE NUISANCE THROUGH RECEIVERSHIP 2018 THERE WERE 2521 CASES OPENED AND SERVICED WITH AN AVERAGE AND IT WAS VERY SUCCESSFUL

SOUTH MERCED RECEIVERSHIP PROJECT



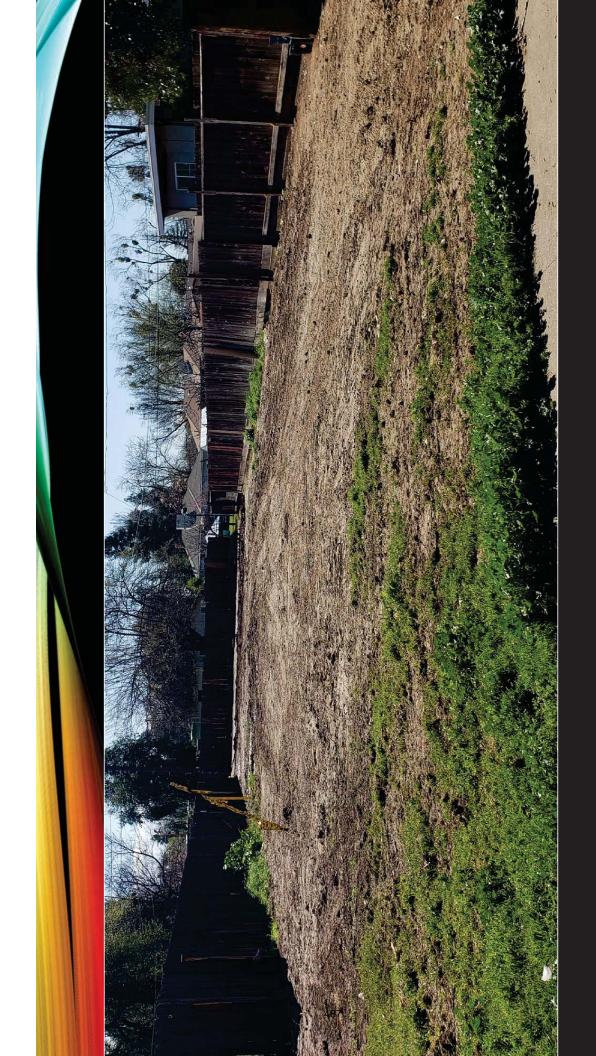




AFTER



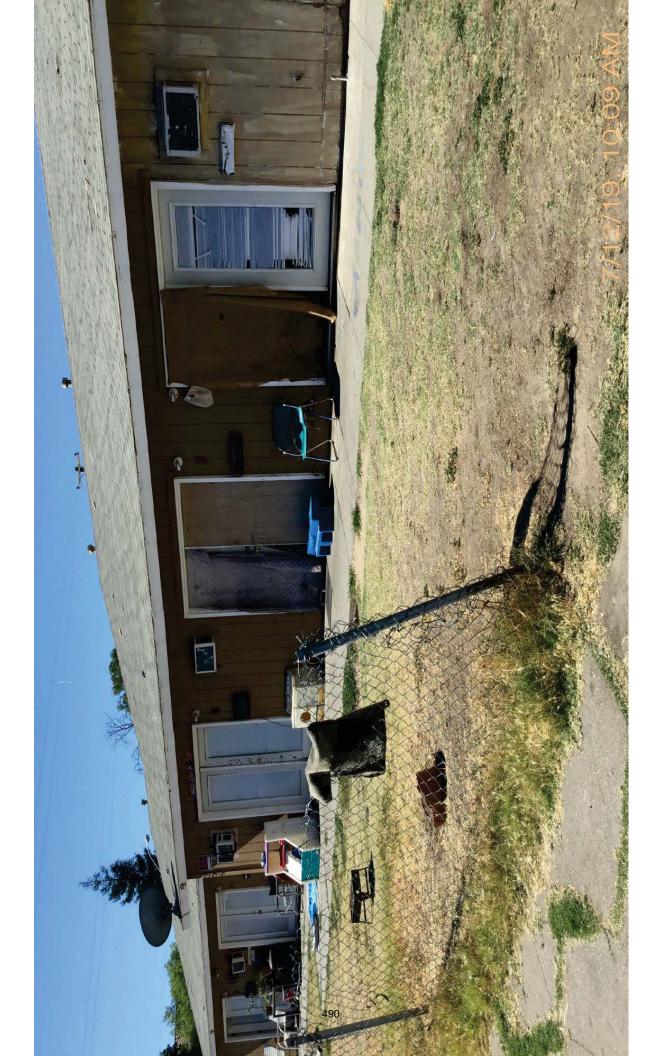
2019 TASK FORCE ABATEMENT OF PUBLIC NUISANCE

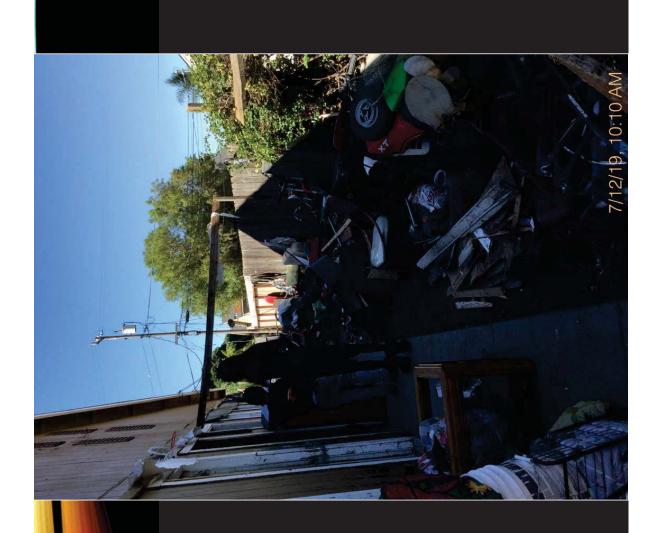


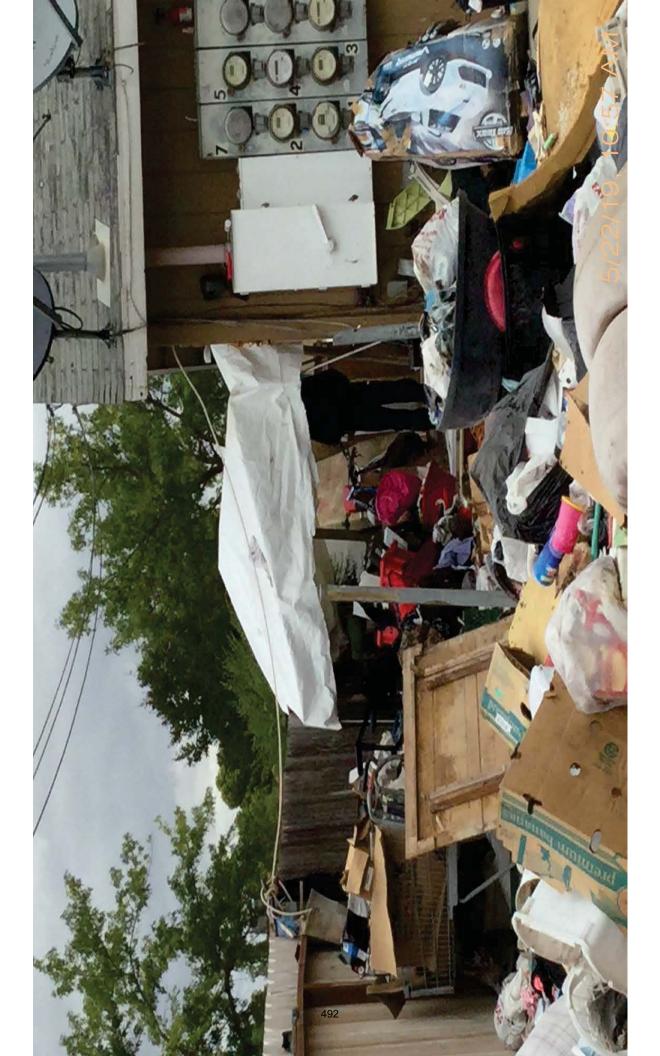
TASK FORCE TOP TEN PROPERTIES

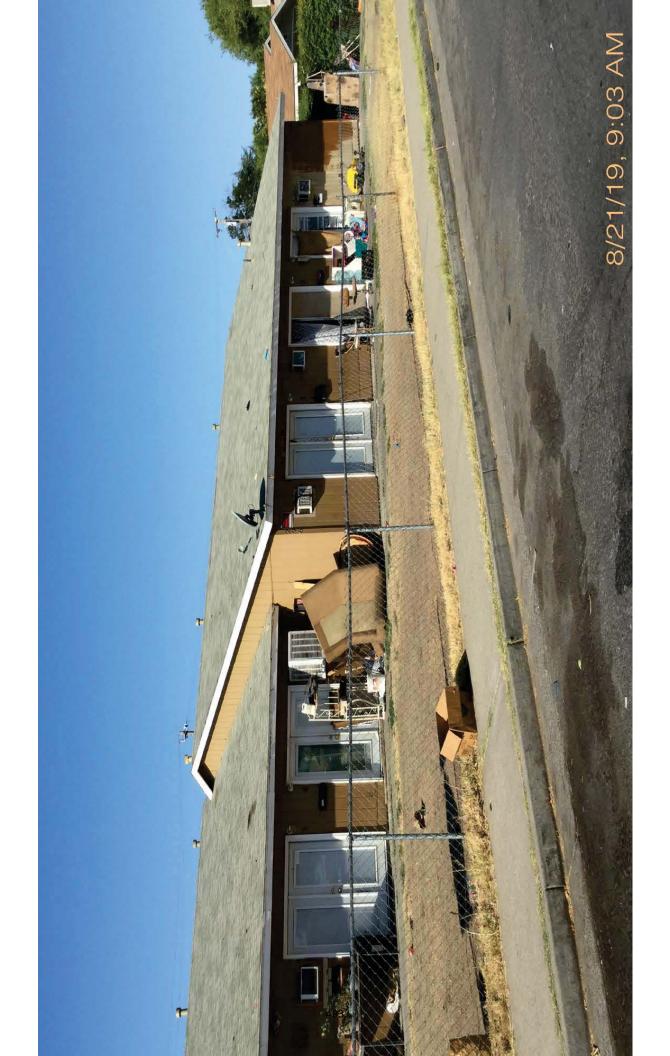
- 1) 296 E. 11TH STREET
- 2) 1041 NORTHWOOD DR
- 3) 7 W. 20TH STREET
- 4) 1050 RAMBLER RD
- 5) 832 W. 11TH STREET
- 6) 255 E. 9TH STREET
- 7) 2434 N. HWY 59 • 8) 1435 W. 7TH ST
- 9) 245 W. 16TH STREET
- 10) 1463 W. 25TH STREE











VOLUNTARY COMPLIANCE IS THE GOAL

When all efforts to achieve compliance are exhausted through our Code Enforcement channels, the Task Force turns its attention to the property

1315 E. OLIVE AVENUE

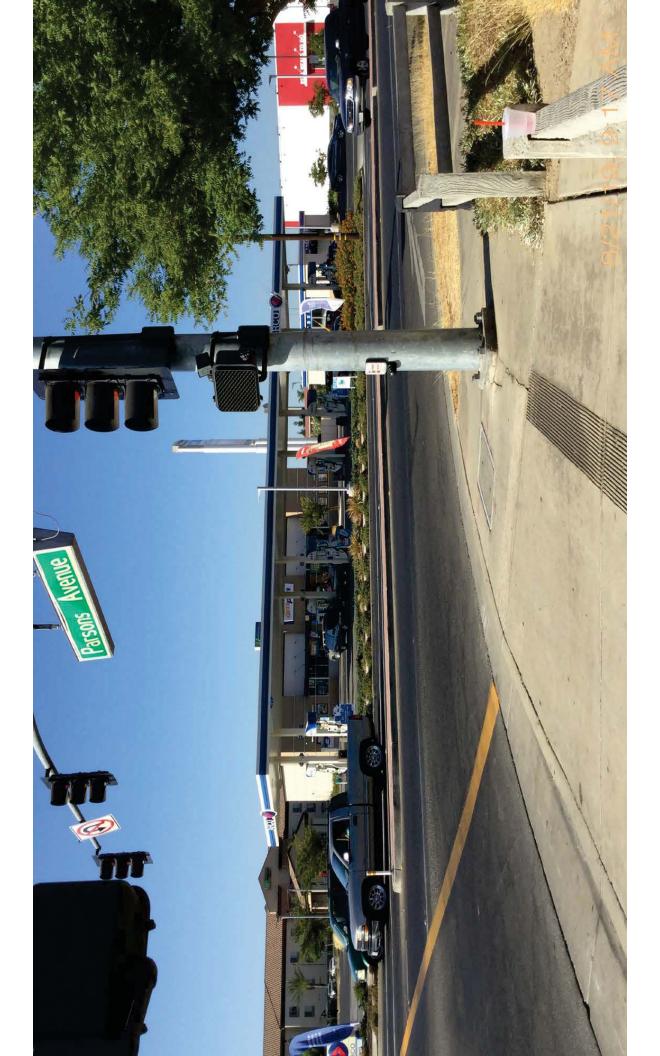




2020 E. CHILDS AVENUE







161 W 23RD ST





2096 AVALON DR

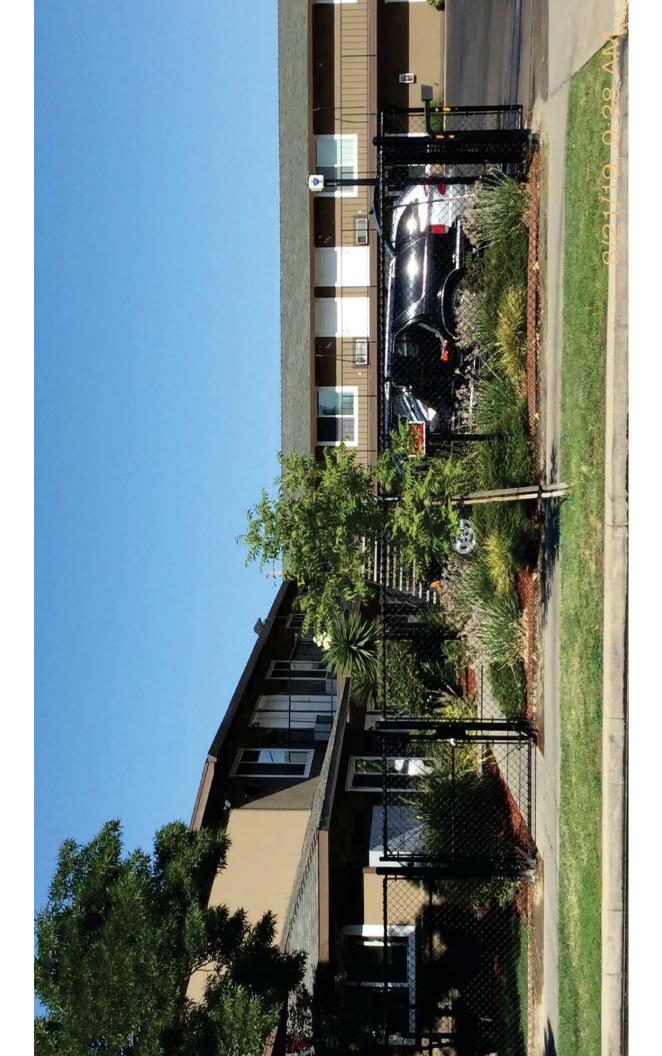


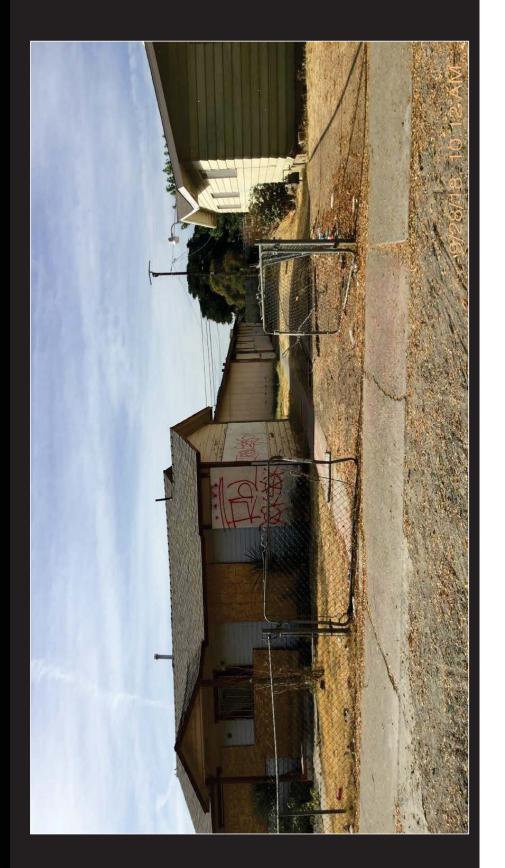


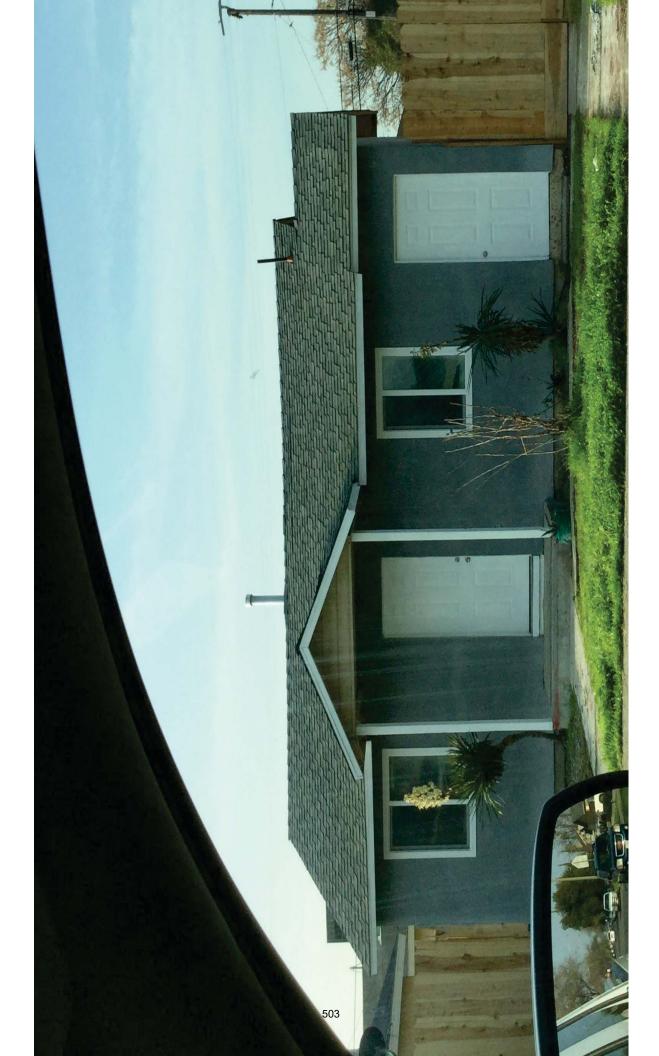
2355 K STREET





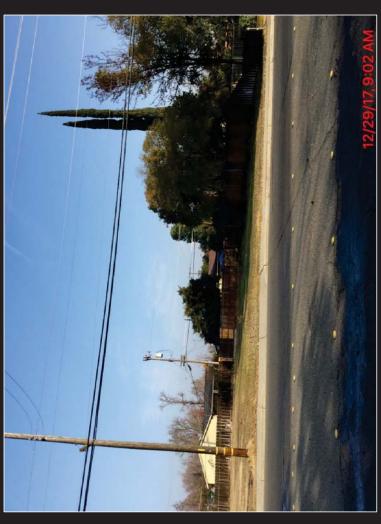




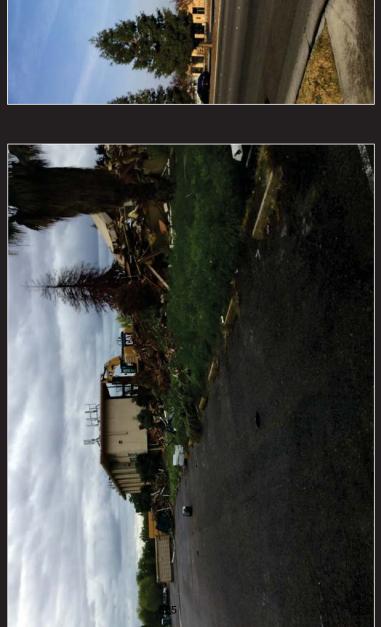


439 E OLIVE AVE





625 W OLIVE AVE





The Joint efforts of the Task Force entities with the support of the City Manager's office and our City Council take on the City's worst properties and conform them into viable properties in our community, residential and commercial as well. The goal is to not only improve the property values but to also change the way of living at that property to create safe and thriving properties again. The task force has several tools for use;

continue to successfully fight the fight against

Compliance orders, Abatement warrants,

property liens and receiverships which

blight and abandoned properties in the City

of Merced.



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item J.2. Meeting Date: 9/3/2019

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Citizens Advisory Charter Review Committee Final Report to City Council to Place Possible Amendments to Sections 400, 402, 604, 7XX, 707, 711, and 1112 of the City of Merced Charter on the March 2020 Primary Ballot

REPORT IN BRIEF

Considers the final report from the Citizens Advisory Charter Review Committee for possible placement of recommended amendments to the City of Merced Charter on the March 2020 Primary Ballot.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting the final report and recommendations of the Citizens Advisory Charter Review Committee to amend various sections of the City of Merced Charter and directing staff to return to the October 7, 2019 City Council Meeting with the ballot question(s) and Resolutions for calling an election; or,
- B. Accepting the final report with Council suggested changes to the recommendations of the Citizens Advisory Charter Review Committee to amend various sections of the City of Merced Charter and directing staff to return to the October 7, 2019 City Council Meeting with the ballot question(s) and Resolutions for calling an election.

ALTERNATIVES

- 1. Adopt option A or B; or,
- 2. Continue this item to a future meeting (specify date in motion); or,
- Take no action.

AUTHORITY

Section 200, City of Merced Charter

CITY COUNCIL PRIORITIES

Placing potential amendments to the Charter on the March 2020 Primary Ballot.

DISCUSSION

Mayor Murphy initiated the conversation on possible amendments to the City of Merced Charter at

File #: 19-500 Meeting Date: 9/3/2019

the meeting of March 18, 2019. Council directed staff to bring back a brief report outlining the steps for the review.

At the April 1, 2019 City Council meeting, staff reported on a timeline and set of milestones that would need to be met in order to place possible Charter Amendments on the March 2020 Primary Election. At the same meeting, Council directed staff to begin the process that would lead to that end.

The Council agreed that a Citizens Advisory Charter Review Committee should be used, similar to the last comprehensive Charter review in 2007. This committee would have the sole purpose to carry out the charge of the City Council in reviewing all or part of the City of Merced Charter and making a recommendation to the City Council when the task is complete. The City Council made appointments to the Citizens Advisory Charter Review Committee at the May 20, 2019 meeting.

The Citizens Advisory Charter Review Committee met 5 times over the course of two and a half months to complete the charge of the Council and also reviewed some additional Charter sections recommended by individual committee members. Attached is the final report of the committee for City Council review.

IMPACT ON CITY RESOURCES

The City Council has budgeted \$20,000 for election expenses in the FY 2019/2020 Budget.

ATTACHMENTS

- 1. Final Report of the Citizens Advisory Charter Review Committee
- 2. Committee Meeting Minutes



CITIZENS ADVISORY CHARTER REVIEW COMMITTEE

Chair – Shane Smith, District 6
Vice Chair – Sara Hill, District 3
Stephanie Butticci, District 1
Liliana Nava, District 2
Ryan Heller, District 4
Robert Haden, District 5
Loretta Spence, At-large
Sarah Boyle, At-large
Tim O'Neill, At-large

Final Report to City Council September 3, 2019

I. Preamble

Our preeminent statutory document, a City Charter guides and governs the municipal process and determines what form of government will represent the people of a Charter City of California. The City of Merced's Charter Review Committee was originally formed to update the City Charter as needed. Historically this committee has formed and met to introduce needed changes to the fundamental document empowering our municipal government to serve the citizens of Merced. This committee has been entrusted with the noble undertaking of guiding the future of this community through careful examination of the Charter in its current form, while anticipating the future needs of our Community.

II. <u>Chair's Introductory Message</u>

On behalf of my Committee colleagues, I thank City Council and Staff for this opportunity to "reimagine" aspects of how we govern ourselves as a City.

The Committee's deliberations were at times vigorous yet always respectful and mindful of the importance of the City Charter as a guiding document for our community. In the end, I believe we have advanced common-sense proposals that will help improve efficiency and accountability within City Government, update the nature of the City's elected offices in step with changing times, and extend by-district selection of City leaders to Charter-level commissions. We intend each of our amendments to apply prospectively only.

Other substantive proposals did not earn support from a majority of our Committee. Our discussion of them nonetheless warrants Council's attention and, perhaps, foreshadow issues that will be considered when Merced residents again convene to review their Charter a generation from now.

I look forward to presenting the Committee's work to you at an upcoming Council meeting.

- Shane Smith (D-6)

Chair, Citizens' Advisory Charter Review Committee

III. <u>Committee Proposed Amendments to Sections 400, 402, 604, 707, and 711 of the City Charter and Formation of New Sections (Referred to as 7XX)</u>

A. Section 400

Article IV, Section 400(B) would be amended to provide four-year terms for the Office of the Mayor:

Sec. 400. - Number and term.

A. The City Council shall consist of a Mayor elected from the City at large and six City Council Members elected by single-member district election at the times and in the manner provided in this Charter.

- B. The Mayor shall serve a term of two (2) four (4) years and until his/her successor is elected and qualified. The Mayor shall be limited to no more than two, two year four-year terms. For purposes of this subsection, a "term" shall be defined to include serving fifty percent plus one day of a term as Mayor, while service as Mayor for fifty percent or less of a term shall not constitute a term for purposes of term limits.
- C. Individual City Council Members shall serve a term of four (4) years and until his/her successor is elected and qualified. Individual City Council Members shall be limited to no more than two, four-year terms. For purposes of this subsection, a "term" shall be defined to include serving fifty-percent plus one day of a term as a City Council Member, while service as a City Council Member for fifty percent or less of a term shall not constitute a term for purposes of term limits.
- D. Once the Mayor or an individual City Council Member has served the maximum number of terms in that respective office, he/she shall be ineligible to be elected or appointed to that office again.
- E. District boundaries shall be drawn by ordinance.
 - B. <u>Section 402</u>

Article IV, Section 402 would be amended to provide compensation to the City Council and Mayor:

Sec. 402. – Compensation and Reimbursement.

- A. The members of the City Council, including the Mayor, shall receive no compensation a monthly stipend for their services as such, but shall receive reimbursement on order of the city council for council authorized traveling and other expenses when on official duty and shall receive reimbursement for expenses incurred while performing official duties of their office. In addition, each member shall receive the sum of twenty dollars per month, which amount shall be deemed to be reimbursement of other out-of-pocket expenditures and costs imposed upon him in serving as a city councilman. Absence of a councilman council member, including the Mayor, from all regular and special meetings of the council during any calendar month shall render such councilman council member ineligible to receive such stipend for such calendar month.
- B. There shall be established a Citizens' Stipend Setting Commission consisting of seven (7) members to be appointed by the City Council from the qualified

electors of the City. Six (6) members will be appointed by district and one (1) member will be appointed at large.

- 1. The Commission shall hold two (2) public hearings between March 1st and June 30th of every even-numbered year and shall recommend, by majority vote and in writing, to the Council the amount of the monthly stipend which it deems appropriate for the members of the Council for the two (2) year period beginning January 1st of the next year. The amount recommended for each council member shall be the same.
- 2. The Commission shall hold two (2) public hearings between March 1st and June 30th of a Mayoral election year and shall recommend, by majority vote and in writing, to the Council the amount of the monthly stipend which it deems appropriate for the Mayor for his/her entire term beginning in January of the next year. The stipend recommended for the Mayor shall, at a minimum, be the same as the other council members; however, the Commission may recommend providing the Mayor with reasonable compensation beyond his/her stipend as a member of the City Council.
- 3. The Council shall, by resolution, adopt the stipends as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. Stipends of the council members and Mayor may be reduced at any time by two-thirds (2/3) vote of the Council. Stipends shall remain in effect until amended by a subsequent resolution adopted pursuant to the provisions of this section.

C. Section 604

Article VI, Section 604 would be amended to give the Finance Officer a more direct role in reporting the financial condition of the City to City Council:

Sec. 604. - Finance officer—Powers and duties.

The Finance Officer shall have power and be required to:

- A. Have charge of the administration of the financial affairs of the City under the direction of the City Manager;
- B. Compile the budget expense and revenue estimates for the City Manager City Council, based upon the City Manager's proposed budget; and at the end of the fiscal year, prepare and submit a complete report on the finances of the City to the City Council in consultation with the City Manager;

- C. Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to insure that budget appropriations are not exceeded; audit all purchase orders before issuance; audit and approve before payment, all bills, invoices, payrolls, demands or charges against the City government and, with the advice of the City Attorney, when necessary, determine the regularity, legality and correctness of such claims, demands or charges;
- D. Maintain a general accounting system for the City government and each of its offices, departments and agencies;
- E. Keep separate accounts for the items of appropriation contained in the City budget, each of which accounts shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it and the unencumbered balance; require reports of the receipts and disbursements from each receiving and expending agency of the City government to be made daily or at such intervals as he/she may deem expedient;
- F. Submit to the City Council and the City Manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City; and as of the end of each fiscal year, submit a complete financial statement and report;
- G. Collect all taxes, assessments, license fees and other revenues of the City, or for whose collection the City is responsible, and receive all money receivable by the City from the county, state or federal government, or from any court, or from any office, department or agency of the City;
- H. Have custody of all public funds belonging to or under the control of the City or any office, department, or agency of the City government, and deposit all funds coming into his/her hands in such depository as may be designated by Resolution of the City Council, or, if no such Resolution be adopted, by the City Manager, and in compliance with all of the provisions of the State Constitution and laws of the State, governing the handling, depositing and securing of public funds;
- I. Supervise the keeping of current inventories of all property of the City by all City departments, offices and agencies;
- J. Establish a centralized purchasing system for all City offices, departments and agencies; and,
- K. Prepare rules and regulations governing the contracting for, purchasing, storing, distribution, or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the City Manager and the City Council for adoption by Ordinance; and prepare

administrative policies and procedures implementing this Section and recommend them for review and approval by the City Manager.

D. Section 707

Article VII, Section 707 would be amended so that membership of the Planning Commission will be comprised of residents of each City district:

Sec. 707. - Planning commission.

There shall be a City Planning Commission consisting of seven members to be appointed by the City Council from the qualified electors of the City, none of whom shall hold any paid office or employment in the City government. Six (6) members will be appointed from each of the six (6) districts and one (1) member will be appointed at large. Should a district appointment remain vacant for more than ninety (90) days, the City Council has the authority and may elect to appoint an otherwise-qualified at large member to fill the district vacancy. The number of members to comprise the commission may be changed by Ordinance of the City Council to not less than five nor more than nine members.

The services of the City Engineer, City Attorney, Chief Building Official, Director of Development Services and other City staff shall be made available to such commission.

E. Section 711

Article VII, Section 711 would be amended to add language making it consistent with the amendment of Section 707:

Sec. 711. - Recreation and parks commission.

There shall be a recreation and parks commission consisting of seven members to be appointed by the city council from the qualified electors of the city and no member of said commission shall hold any paid office or employment in the city government. Six (6) members will be appointed from each of the six (6) districts and one (1) member will be appointed at large. Should a district appointment remain vacant for more than ninety (90) days, the City Council has the authority and may elect to appoint an otherwise-qualified at large member to fill the district vacancy. The number of members to comprise the commission may be changed by ordinance of the city council to not less than five nor more than nine members. In the event the city council contracts with other agencies interested in recreation and parks for the joint exercise of any of such functions, such contract may provide for representation on the commission of otherwise qualified representatives of such agencies during the existence of such contract or extensions thereof.

F. <u>Newly Composed Section 7XX</u>

New, as-yet-unnumbered Sections 7XX would be added to Article VII to create and define a Tax Transparency Commission empowered to review each existing and any future special tax measures:

Sec. 7XX. – Tax Transparency Commission.

There shall be a Tax Transparency Commission consisting of not less than seven (7) nor more than nine (9) members to be appointed by the City Council from the qualified electors of the City. Six (6) members will be appointed from each of the six (6) districts and the remaining member(s) will be appointed at large, and no member of said commission shall hold any paid office or employment in the city government. Should district appointments remain vacant for more than ninety (90) days, the City Council has the authority and may elect to appoint an otherwise-qualified at large member to fill the vacancy. The Tax Transparency Commission shall meet quarterly.

Sec. 7XX. – Tax Transparency Commission—Powers and Duties.

The Tax Transparency Commission shall have authority to:

- A. Review the projected revenue and expenditures for the funds generated by each general or special tax measure.
- B. Make budget recommendations to the City Council in accordance with and to maintain compliance with each general or special tax measure.
- C. Review annual audits of each general or special tax measure and report any findings to the City Council.

G. Section 1112

Article XI would be amended by deleting the requirement for a cash basis fund:

Section 1112. - Cash basis fund.

The City Council shall maintain a revolving fund to be known as the "Cash Basis Fund," for the purpose of placing the payment of running expenses of the City on a cash basis. An operating reserve shall be built up in this Fund from any available sources in an amount that the City Council deems sufficient with which to meet all lawful demands against the City for the first five months, or other necessary period, of the succeeding fiscal year prior to the receipt of ad valorem tax revenues. Transfers may be made by the City Council from such Fund to any other fund or funds of such sum or sums as may be required for the purpose of placing such funds, as nearly as possible, on a cash basis.

All moneys so transferred from the Cash Basis Fund shall be returned thereto before the end of the fiscal year.

IV. <u>Proposals Discussed Without Adoption</u>

At least three Committee members voted to discuss a number of proposals that were not ultimately adopted by a majority of the full Committee. A summary of those proposals in order of the relevant Charter section is as follows:

Article IV, Section 400(D): At the July 25 meeting, Chair Smith proposed that a mayor who had served two terms in that office be given the opportunity to again serve as mayor after a "coolingoff" period. He argued that, as leadership training initiatives like Leadership Merced develop residents for governance roles earlier in their careers, the average age of council members will trend younger over time and, by likely extension, the average age of mayors will trend younger as well. The current Section 400(D) prevents someone who held the mayor's office earlier in life from returning to serve again as mayor. By a 7-2 straw poll vote, the Committee asked the City Attorney to craft a potential revision to Section 400(D) in line with the Chair's proposal. That language appears in the agenda for the August 15 meeting. At that meeting, however, Chair Smith withdrew support for his own proposal. He noted that, upon reflection, allowing a termedout mayor to seek re-election cuts against a key purpose of the City's voter-approved move to by-district Council elections, namely, developing leaders from diverse City geographies who may bring fresh perspectives and ideas to their office. Chair Smith also noted that the Committee had essentially re-affirmed that purpose when voting to recommend shifting Planning and Parks Commission membership to a by-district format. No other member of the Committee spoke in favor of bringing the proposal to a vote, and no vote was taken for want of a motion.

Article V, Section 501 and Article VI, Section 604: At the July 25 meeting, Member Heller proposed transferring certain powers currently held by the City Manager to the Finance Officer. A majority of the Committee agreed that some clean-up language in the Charter's statement of the Finance Officer's duties should be considered further. However, there was no majority support for further discussion of Member Heller's proposal to transfer the power to advise the City Council on the financial condition and needs of the City from the City Manager (current Sections 501(C) and (D)) to the Finance Officer (proposed additions to Section 604(B)), nor to redirect the Finance Officer to report to City Council instead of the City Manager (current Section 604(A)). Member Heller's proposed language appears in the agenda packet for the July 25 meeting.

Article VI, Section 605: At the July 25 meeting, Member Heller proposed eliminating the City Council's ability to consolidate Charter officers. That proposal did not receive majority support from the Committee and so discussion of it ended without a motion. Member Heller's proposed revisions to Section 605 appears in the agenda packet for the July 25 meeting.

Article VI, Section 605: At the July 25 meeting, Member Heller proposed limiting the duration of any contract with an external vendor for services ordinarily held by a Charter officer to one-year. He argued that the practice has been abused in other municipalities. A majority of the Committee wished to continue discussion of that proposal until the August 15 meeting. At that meeting, the proposal was amended by Member Heller upon suggestion of Chair Smith to allow a majority of Council to renew such a contract for an additional year, with no cap on the number of times a contract could be extended. Mr. Heller had argued that the time limit itself was less important than the requirement that City Council re-justify such a contract arrangement in public session at regular intervals. Nonetheless, upon motion by Member O'Neill, seconded by Member Butticci, the Committee voted 6-3 to take no action on Section 605. Member Heller's proposed language appears in the agenda packet for the July 25 meeting.

Article VII, Section 705: At the July 9 meeting, Chair Smith suggested that members of Charter boards and commissions deserve some sort of stipend to compensate them for their time spent preparing for and contributing to the stewardship of the City. He argued that, like council members, appointed commissioners give up time that could be devoted to paying work and incur out-of-pocket expenses indirectly related to their service, such as childcare. Appointed commissioners also must deal with similar stresses related to their office. At the July 25 meeting, however, Chair Smith stated that he had chosen not to advance this idea further in order to give City Council and, perhaps, the voters a clearer path to consider the Committee's proposed amendments to Article IV, Section 402 and its system for compensating the City Council and Mayor.

Article XI, Section 1111: At the July 9 meeting, Member O'Neill proposed that the Charter impose a robust preference for local vendors in City contracting. Thereafter City Staff provided the Committee with the text of Resolution No. 2018-18 adopting a Local Business Preference Policy, and its accompanying Ordinance No. 2485, each of which had passed with the unanimous approval of the City Council. At the July 25 meeting, in view of that the Resolution and Ordinance, the Committee voted on motion of Member Haden, seconded by Member O'Neill, to recommend no changes to Section 1111.

Article XI et seq.: At the July 9 and July 25 meetings, at the suggestion of Ex-Officio Member Murphy, the Committee considered creating an Audit Subcommittee comprised of less than a quorum of City Council members. That group would be tasked with reviewing the annual independent financial audit in consultation with the City's auditors, and then presenting any irregularities or other areas of concern to the full Council in a public session. The Committee variously observed that audit committees are a common feature of non-profit organizations and favored the idea of requiring a group of council members to identify financial concerns so that they could be reviewed by City Council. In the end, however, the Committee tended to believe that each council member is responsible for the financial well-being of the City, and so the proposed Audit Subcommittee might have the unintended consequence of permitting a quorum

of the City Council to pay less attention to the independent financial audit than they should. The Committee took no further action on this proposal.



CITY OF MERCED

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

Minutes Citizens Advisory Charter Review Committee

Tuesday, June 18, 2019

6:00 PM

NOTICE TO PUBLIC

WELCOME

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

PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE BOARD/COMMISSION CLERK

Members of the audience who wish to address the Commission 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 Board/Commission 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. CALL TO ORDER

Mayor MURPHY called the meeting to order at 6:02 PM.

B. PLEDGE OF ALLEGIANCE

Mayor MURPHY led the Pledge of Allegiance.

C. ROLL CALL

Present: 6 - Shane Smith, Robert Haden, Sara Hill, Liliana Prado Nava, Loretta Spence and

Sarah Boyle

Absent: 2 - Tim O'Neill and Ryan Heller

D. BUSINESS

SUBJECT: Selection of Committee Chair and Vice Chair

REPORT IN BRIEF

Considers selection of a Chair and Vice Chair to facilitate running committee meetings.

RECOMMENDATION

Nominate and appoint one Committee Member as Chair and one Committee Member as Vice Chair.

A motion was made by Member Haden, seconded by Member Hill, to select Member Smith as Chair. The motion carried by the following vote:

Aye: 6 - Member Smith

Member Haden Member Hill

Member Prado Nava Member Spence Member Boyle

No: 0

Absent: 3 - Member O'Neill

Member Heller

Soares

A motion was made by Member Hill, seconded by Member Smith, to appoint Member Hill as Vice Chair. The motion carried by the following vote:

Aye: 6 - Member Smith

Member Haden Member Hill

Member Prado Nava Member Spence Member Boyle

No: 0

Absent: 3 - Member O'Neill

Member Heller

Soares

SUBJECT: Selection of Dates for Remaining Citizens Advisory Charter
Review Committee Meetings

REPORT IN BRIEF

Considers dates for the remaining meetings to allow members to plan accordingly.

RECOMMENDATION

Citizens Advisory Charter Review Committee - adopt a motion selecting dates for the next 5 committee meetings.

A motion was made by Member Haden, seconded by Member Nava, selecting July 9, July 25, August 15, August 22, and August 29 to hold the remaining meetings of the committee. The motion carried by the following vote:

Aye: 6 - Member Smith

Member Haden Member Hill

Member Prado Nava Member Spence Member Boyle

No: 0

Absent: 3 - Member O'Neill

Member Heller

Soares

E. PUBLIC COMMENT

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 3 minutes. State law prohibits the Board/Commission 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.

Clerk's Note: There were no public speakers.

F. REPORTS

SUBJECT: Brown Act Training and Committee Meeting Guidelines

REPORT IN BRIEF

The City Attorney will provide Brown Act training and meeting guidelines to the committee.

RECOMMENDATION

For information only.

City Attorney Phaedra NORTON gave a slideshow presentation on the Brown Act and answered clarifying questions for the committee regarding email communications between members.

SUBJECT: Discussion on Council Priorities for Charter Review and Selection of Initial Sections for Committee Review

REPORT IN BRIEF

Mayor Murphy will provide insight into City Council's desire to have the City of Merced Charter reviewed for possible updates to various sections.

RECOMMENDATION

Charter Review Committee - Adopt a motion selecting Charter sections for initial review based on City Council priorities to return to the next meeting with suggested changes for discussion.

Mayor MURPHY provided background to the committee on the various sections the City Council has asked the committee to review. He spoke on considering removal of Section 1112 regarding the Cash Basis Fund, reviewing Section 400 to possibly change the Mayoral term from 2 to 4 years and reviewing Section 402 regarding compensation given to City Council Members. He also suggested the possibility of adding a section on financial oversight and giving the Citizens Advisory Charter Review Committee some flexibility to review other sections as time permits.

The committee asked staff for additional information to be on the next agenda in order to help the discussions and to see the Mayoral terms and compensation information from comparable cities.

City Manager Steve CARRIGAN discussed a poll that was done to guage the viability of a ballot measure to change the Charter and stated he would provide the results of the poll at the committee's next meeting.

A motion was made by Member Smith, seconded by Member Haden, that the committee review Charter Sections 1112, 400, 402, consider the addition of a section regarding financial auditors, and possible additional items to be brought forward by the committee. The motion carried by the following vote:

Aye: 6 - Member Smith

Member Haden Member Hill

Member Prado Nava Member Spence

Member Boyle

No: 0

Absent: 3 - Member O'Neill

Member Heller

Soares

G. ADJOURNMENT

Clerk's Note: The meeting adjourned at 6:55 PM.

A motion was made by Member Haden, seconded by Member Smith, to adjourn the meeting. The motion carried by the following vote: Aye: 6 - Member Smith

Member Haden Member Hill

Member Prado Nava Member Spence Member Boyle

No: 0

Absent: 3 - Member O'Neill

Member Heller

Soares



CITY OF MERCED

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

Minutes Citizens Advisory Charter Review Committee

Tuesday, July 9, 2019

6:00 PM

A. CALL TO ORDER

Committee Chair SMITH called the meeting to order at 6:01 PM.

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Clerk's Note: Committee Member SPENCE arrived at 6:06 PM.

Present: 9 - Shane Smith, Tim O'Neill, Robert Haden, Ryan Heller, Sara Hill, Liliana Prado

Nava, Loretta Spence, Sarah Boyle and Stephanie Butticci

Absent: 0

D. PUBLIC COMMENT

There were no speakers.

E. CONSENT CALENDAR

SUBJECT: Citizens Advisory Charter Review Committee Minutes of June 18, 2019

REPORT IN BRIEF

Considers the approval and filing of meeting minutes.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion approving the meeting minutes of June 18, 2019.

This Consent Item was approved.

F. REPORTS

SUBJECT: Update to the Charter Review Committee on the Public Survey Results for the Proposed Charter Amendment

REPORT IN BRIEF

City Staff will provide an update to the Charter Review Committee on the

results of a recent public option survey conducted to test the viability of a proposed Charter Amendment on the March 2020 ballot.

RECOMMENDATION

Provide staff direction on next steps for pursuing items to be included in the Charter Amendment.

City Manager Steve CARRIGAN gave the Committee a report on the recently conducted survey to test the viability of a ballot measure to change provisions in the Charter.

The Committee discussed the survey questions, demographics, and whether a second survey would be performed.

Clerk's Note: There was no public comment.

G. BUSINESS

SUBJECT: Review, Discussion, and Recommendation Regarding
Potential Modifications, if any, to Charter Section 1112 Regarding the
Cash Basis Fund

REPORT IN BRIEF

Review Charter Section 1112 Cash Basis Fund

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Making a recommendation to the City Council to remove Charter Section 1112; or
- B. Making no changes to Charter Section 1112.

Finance Officer Venus RODRIGUEZ gave a presentation on Section 1112 of the Charter regarding the Cash Basis Fund. She cited examples of other Charter Cities that have a similar provision with much smaller amounts required in the fund. She stated that the City now uses "pooled cash" to keep the City operating and does not use the fund at this time. She also stated that in an emergency, the City could use funds from the Local Agency Investment Fund.

The Committee briefly discussed the section and agreed that a repeal of the section was warranted.

A motion was made by Member Haden, seconded by Member Heller, to recommend repeal of Section 1112. The motion carried by the following vote:

Aye: 9 - Member Smith

Member O'Neill Member Haden Member Heller Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 0 **Absent**: 0

SUBJECT: Review, Discussion, and Recommendation Regarding
Potential Modifications, if any, to Charter Section 1118 Independent
Audit

REPORT IN BRIEF

Review Charter Section 1118 Independent Audit

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Making a recommendation to the City Council to modify Charter Section 1118; or
- B. Making no changes to Charter Section 1118.

Clerk's Note: This item was moved up in the agenda at the discretion of Chair SMITH.

The Committee briefly discussed the possibility of an audit committee before deciding to table it to the next meeting to allow input from Ex-Officio Committee Member Mayor MURPHY on the item.

Clerk's Note: This item was tabled until the July 25, 2019 meeting.

SUBJECT: Review, Discussion, and Recommendation Regarding
Potential Modifications, if any, to Charter Section 402 Regarding City
Council Compensation

REPORT IN BRIEF

Consider a potential amendment to Charter section 402 to increase City Council compensation

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Recommending a change to Charter Section 402 regarding City Council Compensation (specify amount in motion) and directing staff to draft the appropriate language for final City Council Approval; or,
- B. Recommending no change to Charter Section 402 or current City Council compensation amounts.

Assistant City Clerk John TRESIDDER gave a brief presentation on how the local municipalities compensate their councils.

The Committee discussed the need to add a stipend and discussed how much time Council Members spend each month at meetings and time spent outside of meetings. The committee also discussed various dollar amounts that would be appropriate for the Council to help improve access for more citizens.

The Committee discussed the use of the current Government Code language in the Charter in regards to compensation and the possibility of having a salary setting committee.

The Committee requested a legal opinion on inserting Government Code language into the Charter section and the overall impact to the budget.

Casey STEED, Merced resident - spoke about the need for a reasonable Council salary with the possibility of raising it in the future.

Clerk's Note: This item was tabled until the next regular meeting.

SUBJECT: Review, Discussion, and Recommendation Regarding
Potential Modifications, if any, to Charter Section 400 which May
Include a Change to the Mayoral Term From 2 to 4 Years

REPORT IN BRIEF

Considers changing the current Mayoral term from 2 to 4 years.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

A. Recommending a change to Charter Section 400 to increase the

Mayoral term from 2 to 4 years and directing staff to draft the appropriate language for final approval by City Council; or,

B Recommending no changes to Charter Section 400 regarding the Mayor's term.

Assistant City Clerk John TRESIDDER explained the different Mayoral term lengths for neighboring municipalities.

The Committee discussed the office of the Mayor as being ceremonial as written in the Charter.

The Committee discussed the differences between a two and four year Mayoral term. They discussed different options which included multiple two year terms, multiple four year terms, a single four year term, and the possibility of a cumulative total of years that could be either as Mayor or Council Member.

Casey STEED, Merced resident - spoke in favor of two four year terms.

Clerk's Note: This item was tabled to the next regular meeting.

SUBJECT: <u>Citizens Advisory Charter Review Committee Initiated</u>
Request to Review Charter Sections

REPORT IN BRIEF

Allows for review requests to be initiated by individual committee members.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion directing staff to add a Charter Section (specify section in motion) for full committee discussion and review at the next regular meeting.

Committee Member BOYLE - no additions.

Committee Member HELLER - requested review of Charter Section 600 regarding Charter Officers. Member HELLER agreed to provide a memo to Committee for clarification.

Committee Member NAVA - no additions.

Committee Member SPENCE - no additions.

Committee Member ONEILL - requested review of Charter Section 1111 regarding local preference for businesses.

Committee Member HAYDEN - requested legal clarification on the local preference policy.

Committee Vice Chair HILL - no additions.

Committee Member BUTTICCI - no additions.

Assistan City Manager DIETZ - requested review of the method of appointment for the Planning Commission and Recreation and Parks Committee to consider districts. She also requested the Committee consider a Tax Transparency Committee to consolidate current tax revenue oversight.

Committee Chair SMITH - suggested a conversation on accountability for Council compensation in Charter Section 402 and 400D regarding the Mayoral term the possible compensation of Board and Commission compensation.

H. ADJOURNMENT

Clerk's Note: The meeting adjourned at 8:23 PM.

A motion was made by Member Haden, seconded by Member Prado Nava, to adjourn the meeting. The motion carried by the following vote:

Aye: 8 - Member Smith

Member O'Neill Member Haden Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 1 - Member Heller

Absent: 0



CITY OF MERCED

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

Minutes Citizens Advisory Charter Review Committee

Thursday, July 25, 2019

6:00 PM

A. CALL TO ORDER

Chair SMITH called the meeting to order at 6:03 PM.

B. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Vice Chair HILL.

C. ROLL CALL

Clerk's Note: Committee Member SPENCE arrived at 6:08 PM.

Ex Officio Members Present: Mayor Mike MURPHY and Mayor Pro Tempore MARTINEZ.

Present: 9 - Shane Smith, Tim O'Neill, Robert Haden, Ryan Heller, Sara Hill, Liliana Prado

Nava, Loretta Spence, Sarah Boyle and Stephanie Butticci

Absent: 0

D. PUBLIC COMMENT

There were none.

E. CONSENT CALENDAR

SUBJECT: Citizens Advisory Charter Review Minutes of July 9, 2019

REPORT IN BRIEF

Approval of previously held meeting minutes for filing.

RECOMMENDATION

Citizens Advisory Charter Review Committee - adopt a motion approving and filing the meeting minutes of July 9, 2019

A motion was made by Member Heller, seconded by Member Haden, to approve the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Member Smith

Member O'Neill Member Haden Member Heller Member Hill

Member Prado Nava Member Boyle Member Butticci

No: 0

Absent: 1 - Member Spence

F. REPORTS

SUBJECT: Continued Review, Discussion, and Recommendation
Regarding Potential Modifications, if any, to Charter Section 402
Regarding City Council Compensation Including, but not Limited to,
Increasing Council Compensation, Establishing a Salary Setting
Commission, or Other Options Presented by the Committee Members

REPORT IN BRIEF

Consider a potential amendment to Charter section 402 to increase City Council compensation

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Recommending a change to Charter Section 402 regarding City Council Compensation (specify amount in motion) and directing staff to draft the appropriate language for final City Council Approval; or,
- B. Recommending no change to Charter Section 402 or current City Council compensation amounts.

City Attorney Phaedra NORTON gave a slide show presentation on Council compensation models and options.

The Committee agreed on the need for Council compensation. They discussed using the current Government Code section regarding the amount of salary and the possible use of a salary setting committee to maintain transparency.

Ex Officio Member Mayor MURPHY suggested a salary similar to other local municipalities.

Ex Officio Member MARTINEZ stated that an independent committee to

set the salary could help the measure to pass.

The Committee continued to discuss salary and a salary setting committee and generally agreed that a committee could be convened to set the initial salary and meet at a set interval to review and suggest changes to the Council salary as needed. The Committee expressed interest in a seven member committee by Council District be appointed and use the Government Code as a guide for the appropriate salary.

Clerk's Note: Committee Chair SMITH continued this item to the next regular meeting.

SUBJECT: Continued Review, Discussion, and Recommendation
Regarding Potential Modifications, if any, to Charter Section 400 which
May Include, but is not Limited to, a Change to the Duration of the
Mayoral Term, Number of Terms, and Eligibility Limitations

REPORT IN BRIEF

Considers changing the current Mayoral term length from 2 to 4 years and considers the number of terms for the Office of Mayor.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

A. Recommending a change to Charter Section 400 regarding the length and number of terms for the Office of Mayor and directing staff to draft the appropriate language for final approval by City Council; or,

B Recommending no changes to Charter Section 400 regarding the Mayor's term.

City Attorney Phaedra NORTON gave a slide show presentation on various different Mayoral terms adopted by other municipalities.

The Committee discussed the various options and unanimously agreed that a 4-year term was warranted. They further discussed the number of terms and the possibility of adding language to allow for re-election of an individual after a cooling off period.

Casey STEED, Merced resident - agreed with the 4-year term but suggested no term limits to let the voters decide.

Clerk's Note: This item was tabled to the next regular meeting to allow for

the City Attorney to come up with draft language.

G. BUSINESS

SUBJECT: Continued Review, Discussion, and Recommendation
Regarding Potential Modifications, if any, to Charter Section 1118
Independent Audit Including, but not Limited to, Additional
Transparency and/or Accountability Provisions

REPORT IN BRIEF

Review Charter Section 1118 Independent Audit

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Making a recommendation to the City Council to modify Charter Section 1118; or
- B. Making no changes to Charter Section 1118.

The Committee discussed Charter Section 1118 for the possible creation of a citizens audit committee or a Council subcommittee. The Committee agreed that if a Council subcommittee could be created, no change to the Charter would be necessary.

A motion was made by Member Smith, seconded by Member Haden, that no changes be made to Section 1118 and to add comments in the final report. The motion carried by the following vote:

Aye: 9 - Member Smith

Member O'Neill

Member Haden

Member Heller

Member Hill

Member Prado Nava

Member Spence

Member Boyle

Member Butticci

No: 0

....

Absent: 0

SUBJECT: Discussion on Article VII of the Merced City Charter to
Potentially Add a Tax Transparency Commission Which Would be
Charged with Oversight of Existing and Future Tax Measures

REPORT IN BRIEF

Allows for Charter Review Committee discussion on Article VII of the Merced City Charter to allow for the development of a Tax Transparency Commission as requested by Staff.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

A. Providing staff direction on the addition of a Tax Transparency Commission to Article VII of the Charter; or,

B. Take no action

Assistant City Manager Stephanie DIETZ presented to the Committee an idea to combine existing tax oversight committees into one Tax Transparency Committee for current and future tax measures.

The Committee agreed that this concept was sound and requested staff return to the next meeting with draft language for Committee review.

Clerk's Note: This item was tabled to the next regular meeting.

SUBJECT: Review, Discussion, and Recommendation Regarding
Potential Modifications, if any, to Charter Section 1111 Competitive
Bidding - Supplies, Materials, or Equipment Including, but not Limited
to, the Local Vendor Preference

REPORT IN BRIEF

Allows for Committee discussion on Charter Section 1111 as requested by Committee Member O'Neill

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

A. Providing staff direction on any suggested changes to Charter Section 1111; or,

B. Take no action

Clerk's Note: This item was brought forward for discussion by Committee Member O'NEILL.

Committee Member O'NEILL asked for clarification on how the current Local Preference Policy was being implemented.

Finance Officer Venus RODRIGUEZ explained the process used by the

Puchasing Supervisor to ensure that local businesses recieve a 5% preference.

A motion was made by Member Haden, seconded by Member O'Neill, that no changes be made to Charter Section 1111 regarding local preference. The motion carried by the following vote:

Aye: 9 - Member Smith

Member O'Neill Member Haden Member Heller Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 0 **Absent:** 0

SUBJECT: Review, Discussion, and Recommendation on Charter
Sections 501, 604 and 605 Regarding Officers and Employees
Including, but not Limited to, Eliminating Certain Financial
Responsibilities from the Powers and Duties of the City Manager and
Vesting them in the Finance Officer and Modifying the Reporting
Structure Set Forth in Section 605

REPORT IN BRIEF

Allows for Committee discussion on Charter Sections 501, 604, and 605 as requested by Committee Member Heller.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

A. Providing staff direction on any suggested changes to Charter Sections 501, 604 and 605; or,

B. Take no action

Clerk's Note: These items were brought forward for discussion by Committee Member HELLER.

Committee Member HELLER presented reasons for possible updates to Charter Sections regarding Charter Officers in order to maintain the proper balance of power. He expressed concern with the combining of Charter Officer Positions, suggested some language changes to the Finance Officer section in the Charter, suggested placing limits on the length of contracting out Charter Officer positions and the way interim appointments

to Charter Officer postions are handled.

The Committee discussed the proposals and agreed that clean up language for the Finance Officer should be considered.

Ex Officio Members Mayor MURPHY and Mayor Pro Tempore MARTINEZ clarified why the Council may use contracted Charter Officers and extend the contracts in order to find qualified candidates to fill the positions.

The Committee agreed that the conversation on the Finance Officer language and discussion on contracted Charter Officers should be continued to the next meeting.

Casey STEED, Merced Resident - spoke in favor of the proposed changes.

SUBJECT: Discussion on Charter Sections 707 and Section 711
Regarding Planning Commission and Recreation and Parks
Commission Appointments by District

REPORT IN BRIEF

Allows for Committee discussion on Charter Section 707 and 711 as requested by Staff

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

A. Providing staff direction on any suggested changes to Charter Section 707 and 711; or,

B. Take no action

Assistant City Manager Stephanie DIETZ presented the idea of making both the Planning Commission and the Recreation and Parks Commission members appointed by Council District to align with how Council is now elected.

Ex-Officio Member Mayor MURPHY stated that district appointments would make City Council more accountable in keeping commissions filled.

The Committee discussed Council accountability, moving to districts to include all areas of the City, committees as a stepping stone to running for City Council, and possibly using at-large appointments to fill an extended vacancy in a district with no applicants.

Clerk's Note: This item was continued to the next regular meeting to allow staff to present language to the Committee for consideration.

SUBJECT: Citizens Advisory Charter Review Committee Initiated Request to Review Charter Sections

REPORT IN BRIEF

Allows for review requests to be initiated by individual committee members.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion directing staff to add a Charter Section (specify section in motion) for full committee discussion and review at the next regular meeting.

Ex Officio Member Mayor MURPHY suggested the Committee consider a conversation on Merced having a Strong Mayor.

The Committee agreed that this was out of their scope and declined to bring the conversation to a future meeting.

Committee Member HELLER requested to speak about campaign finance at the city level on the next agenda.

The Committee declined to bring Member HELLER's item forward.

H. ADJOURNMENT

Clerk's Note: The meeting adjourned at 8:15 PM.

A motion was made by Member Haden, seconded by Member Prado Nava, that the meeting be adjourned. The motion carried by the following vote:

Aye: 9 - Member Smith

Member O'Neill Member Haden Member Heller

Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 0

Absent: 0



CITY OF MERCED

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

Minutes Citizens Advisory Charter Review Committee

Thursday, August 15, 2019

6:00 PM

A. CALL TO ORDER

Chair SMITH called the meeting to order at 6:03 PM.

B. PLEDGE OF ALLEGIANCE

Vice Chair HILL led the Pledge of Allegiance.

C. ROLL CALL

Clerk's Note: Committee Member NAVA arrived at 6:08 PM and Committee Member SPENCE arrived at 6:18 PM.

Ex Officio Members in attendance: Mayor Mike MURPHY and Mayor Pro Tempore Anthony MARTINEZ.

Present: 9 - Shane Smith, Tim O'Neill, Robert Haden, Ryan Heller, Sara Hill, Liliana Prado

Nava, Loretta Spence, Sarah Boyle and Stephanie Butticci

Absent: 0

D. PUBLIC COMMENT

There was no public comment.

E. CONSENT CALENDAR

SUBJECT: Citizens Advisory Charter Review Minutes of July 25, 2019

REPORT IN BRIEF

Approval of previously held meeting minutes for filing.

RECOMMENDATION

Citizens Advisory Charter Review Committee - adopt a motion approving and filing the meeting minutes of July 25, 2019

A motion was made by Member Haden, seconded by Member O'Neill, that this agenda item be approved. The motion carried by the following vote:

Aye: 7 - Member Smith

Member O'Neill Member Haden Member Heller Member Hill Member Boyle Member Butticci

No: 0

Absent: 2 - Member Prado Nava

Member Spence

F. BUSINESS

SUBJECT: Review of Draft Language Regarding Charter Section

402-Compensation of the Mayor and City Council for Citizens Advisory

Charter Review Committee Discussion, Consideration and Potential

Modification

REPORT IN BRIEF

Considers proposed revisions to City Charter Section 402 regarding compensation for the Mayor and City Council Members.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a Motion:

- A. Approving the language as submitted; or,
- B. Providing staff with direction on any suggested changes to the proposed language for Section 402; or,
- C. Take no action; or,
- D. Continue the matter to the next regular meeting.

The Committee discussed City Council compensation and were generally in favor of using a Compensation Committee to set the dollar amount and review it at set intervals. They agreed the Compensation Committee should be selected by district. The Committee addressed various typos and substituting the word stipend for salary.

A motion was made by Member Haden, seconded by Member Hill, that this agenda item be approved. The motion carried by the following vote:

Absent:

Aye: 7 - Member Smith

Member Haden Member Heller Member Hill

Member Prado Nava Member Boyle

Member Butticci

Member Spence

No: 1 - Member O'Neill

1 -

SUBJECT: Review of Draft Language Regarding Charter Section

400-Number and term of the Mayor and City Council for Citizens

Advisory Charter Review Committee Discussion, Consideration and

Potential Modification

REPORT IN BRIEF

Considers proposed revisions to City Charter Section 400 regarding number and term for the City Council and Mayor.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a Motion:

- A. Approving the language as submitted; or,
- B. Providing staff with direction on any suggested changes to proposed language for Section 400; or,
- C. Take no action; or,
- D. Continue the matter to the next regular meeting.

The Committee briefly discussed changing the Mayoral term to 4 years and were in general agreement.

Clerk's Note: Subsequent to the vote, the Committee discussed the idea of a provision that would allow more than 2 terms provided there were a certain number of years between terms. The Committee declined to make any changes.

A motion was made by Member O'Neill, seconded by Member Prado Nava, to recommend a change to the Mayoral term from 2 to 4 years . The motion carried by the following vote:

Aye: 7 - Member Smith

Member O'Neill Member Heller Member Hill

Member Prado Nava Member Boyle Member Butticci

No: 1 - Member Haden

Absent: 1 - Member Spence

SUBJECT: Review of Draft Language Regarding New Charter Section
 - Tax Transparency Commission for Citizens Advisory Charter Review
 Committee Discussion, Consideration and Potential Modification

REPORT IN BRIEF

Allows for Committee review and discussion of draft language for new Charter Section "Tax Transparency Commission" as requested by the Charter Review Committee

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Approving language as recommended by Staff;
- B. Providing staff direction on any suggested changes to proposed language for new Charter Section "Tax Transparency Commission"; or,
- C. Take no action; or,
- D. Continue to a future meeting.

The Committee discussed the need for adding a new Tax Transparency Commission to review current and future tax measure funding. They suggested edits to the language regarding quarterly meetings and language to clarify filling vacant district seats with qualified electors at-large.

A motion was made by Member Haden, seconded by Member O'Neill, that this agenda item be approved as amended. The motion carried by the following vote:

Aye: 9 - Member Smith

Member O'Neill Member Haden Member Heller Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 0

Absent: 0

SUBJECT: Review of Draft Language Regarding Charter Sections 707 and Section 711 to Modify Planning Commission and Recreation and Parks Commission Appointments by District for Citizens Advisory Charter Review Committee Discussion, Consideration and Potential Modification

REPORT IN BRIEF

Allows for Committee review and discussion of draft language for Charter Section 707 and 711 as requested by the Charter Review Committee

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Approving language as recommended by Staff;
- B. Providing staff direction on any suggested changes to proposed language for Charter Section 707 and 711; or,
- C. Take no action; or,
- D. Continue to a future meeting.

The Committee generally agreed that both the Planning Commission and Recreation and Parks Commission should be appointed by district. They added clarifying language giving Council flexibility in regards to appointing at-large members when district seats could not be filled in a timely manner.

A motion was made by Member Boyle, seconded by Member Hill, that this agenda item be approved as amended. The motion carried by the following vote:

Aye: 9 - Member Smith

Member O'Neill Member Haden Member Heller Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 0

Absent: 0

SUBJECT: Continued Review, Discussion, and Recommendation on
Charter Sections 501, 604 and 605 Regarding Officers and Employees
Including, but not Limited to, Eliminating Certain Financial
Responsibilities from the Powers and Duties of the City Manager and
Vesting them in the Finance Officer and Limiting the Contract of
Outside Firms as Charter Officers to a One-Year Term

REPORT IN BRIEF

Allows for Committee discussion on Charter Sections 501, 604, and 605 as requested by Committee Member Heller.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion:

- A. Providing staff direction on any suggested changes to Charter Sections 501, 604 and 605; or,
- B. Take no action; or,
- C. Continue to a future meeting.

The Committee discussed Member HELLER's suggested changes to Charter Sections 501, 604 and 605. They discussed the balance of power and the current structure of the City Manager and Finance Officer in how they report to Council.

A motion was made by Member HADEN to make no changes to Section 501, 604, and 605. The motion failed for lack of a second.

Kenra BRAGGONIER, Merced - spoke on the previous Charter Review Committee experience and discussed the original Charter Officers.

After further discussion, the Committee agreed that no changes were

needed in Section 501.

The Committee requested staff draft language for Section 604 and return to the next meeting.

After a continued discussion on contracting Charter Officers, Chair SMITH entertained a motion on the Section 605.

A motion was made by Member O'Neill, seconded by Member Butticci, to make no changes to Charter Section 605. The motion carried by the following vote:

Aye: 6 - Member O'Neill

Member Haden

Member Hill

Member Prado Nava

Member Boyle

Member Butticci

No: 3 - Member Smith

Member Heller

Member Spence

Absent: 0

SUBJECT: Final Citizens Advisory Charter Review Committee Initiated Request to Review Charter Sections

REPORT IN BRIEF

Allows for review requests to be initiated by individual committee members.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a motion directing staff to add a Charter Section (specify section in motion) for full committee discussion and review at the next regular meeting.

There were no requests.

SUBJECT: Initial Discussion on the Form, Content and Other Matters

Related to the Citizens Advisory Charter Review Committee Final

Report to be Presented at the September 3, 2019 City Council Meeting

REPORT IN BRIEF

Allows for initial discussion on the form and content and other related matters for the final report that will be presented to the Merced City Council

RECOMMENDATION

Citizens Advisory Charter Review Committee - Provide staff direction as needed regarding the draft final report.

The Committee discussed the format of the final report to be given to Council. They directed staff to bring a draft document to the next regular meeting for review and discussion.

G. ADJOURNMENT

Clerk's Note: The meeting adjourned at 7:20 PM.

A motion was made by Member Heller, seconded by Member Haden, to adjourn the meeting. The motion carried by the following vote:

Aye: 9 - Member Smith

Member O'Neill

Member Haden

Member Heller

Member Hill

Member Prado Nava

Member Spence

Member Boyle

Member Butticci

No: 0

Absent: 0



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

Minutes Citizens Advisory Charter Review Committee

Thursday, August 22, 2019

6:00 PM

A. CALL TO ORDER

Chair SMITH called the meeting to order at 6:02 PM.

B. PLEDGE OF ALLEGIANCE

Vice Chair HILL led the Pledge of Allegiance.

C. ROLL CALL

Present: 7 - Shane Smith, Robert Haden, Sara Hill, Liliana Prado Nava, Loretta Spence, Sarah

Boyle and Stephanie Butticci

Absent: 2 - Tim O'Neill and Ryan Heller

D. PUBLIC COMMENT

There was none.

E. CONSENT CALENDAR

SUBJECT: Citizens Advisory Charter Review Minutes of August 15, 2019

REPORT IN BRIEF

Approval of previously held meeting minutes for filing.

RECOMMENDATION

Citizens Advisory Charter Review Committee - adopt a motion approving and filing the meeting minutes of August 15, 2019

A motion was made by Member Haden, seconded by Member Prado Nava, that this agenda item be approved. The motion carried by the following vote:

Aye: 7 - Member Smith

Member Haden

Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci **No:** 0

Absent: 2 - Member O'Neill

Member Heller

F. BUSINESS

SUBJECT: Review of Draft Language Regarding Charter Section 604 -Finance Officer Specifically Section B, for the Citizens Advisory Charter Review Committee Discussion, Consideration and Potential Modification

REPORT IN BRIEF

Considers proposed revisions to City Charter Section 604 regarding the Finance Officer.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a Motion:

- A. Approving the language as submitted; or,
- B. Providing staff with direction on any suggested changes to the proposed language for Section 604; or,
- C. Take no action.

The Committee briefly discussed the language for Charter Section 604 B provided by staff.

A motion was made by Member Haden, seconded by Member Hill, that this agenda item be approved. The motion carried by the following vote:

Ave: 7 -Member Smith

Member Haden

Member Hill

Member Prado Nava Member Spence

Member Boyle

Member Butticci

No: 0

Absent: 2 -Member O'Neill

Member Heller

SUBJECT: Review, Discussion, and Consideration on the Form, Content and Other Matters Related to the Citizens Advisory Charter Review Committee Final Report to be Presented at the September 3, 2019 City Council Meeting

REPORT IN BRIEF

Allows for discussion on the form and content and other related matters for the final report that will be presented to the Merced City Council.

RECOMMENDATION

Citizens Advisory Charter Review Committee - Adopt a Motion:

- A. Adopting the Final Report as drafted for submission to City Council and authorizing the Chair and Vice Chair to represent the Committee at the September 3, 2019 City Council Meeting; or,
- B. Adopting the Final Report as amended by the Committee for submission to the City Council and authorizing the Chair and Vice Chair to represent the Committee at the September 3, 2019 City Council Meeting; or,
- C. Continue this item to a future meeting.

The Committee briefly discussed the form and content of the final report and recommended adding the previously adopted language for Section 604 B to the final report.

A motion was made by Member Prado Nava, seconded by Member Hill, that this agenda item be approved as amended. The motion carried by the following vote:

Aye: 7 - Member Smith

Member Haden

Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 0

Absent: 2 - Member O'Neill

Member Heller

G. ADJOURNMENT

Clerk's Note: The meeting adjourned at 6:09 PM.

A motion was made by Member Hill, seconded by Member Haden, to adjourn the meeting. The motion carried by the following vote:

Aye: 7 - Member Smith

Member Haden Member Hill

Member Prado Nava Member Spence Member Boyle Member Butticci

No: 0

Absent: 2 - Member O'Neill

Member Heller



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

ADMINISTRATIVE REPORT

Agenda Item K.1. Meeting Date: 9/3/2019

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Personnel Board Appointment (1)

REPORT IN BRIEF

Consider appointing one individual to the Personnel Board.

RECOMMENDATION

City Council - Adopt a motion appointing Dorothea "Lynn" White to serve as a member of the Personnel Board to a seat with a term expiration of July 1, 2022.

ALTERNATIVES

- 1. Appoint the individual to the Personnel Board; or,
- 2. Refer to staff with direction to resume recruitment of applicants.

AUTHORITY

Article VII, Sections 700, 702, 702.1, 707, and 708 of the Merced City Charter.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

There is currently one vacancy on the Personnel Board. The vacancy is the result of a Board Member who had served two full terms and is no longer eligible to serve. The City Clerk's Office has received one application for the Personnel Board. The application of Dorothea "Lynn" White, as well as the current roster, are attached.

History and Past Actions:

The Personnel Board, created by City Charter, recommends to City Council the adoption, amendment, or repeal of civil service rules and regulations, in addition to other personnel matters. The Board consists of five members who serve four-year terms of office.

IMPACT ON CITY RESOURCES

No impact on City resources.

ATTACHMENTS

File #: 19-516 Meeting Date: 9/3/2019

- 1. Personnel Board Roster
- 2. Application of Dorothea "Lynn" White



BOARD ROSTER						
	THERESA (TERRI) L LUCAS 1st Term Jul 01, 2015 - Jul 01, 2019	Appointing Authority City Council Position Member Category Employee Nominated				
	JACK LESCH 2nd Term Jul 01, 2016 - Jul 01, 2020	Appointing Authority City Council Position Chair Category Employee Nominated				
	YOLANDA CHAVEZ 2nd Term Jul 01, 2017 - Jul 01, 2021	Appointing Authority City Council Position Member Category Board Nominated				
	FRED BUCKINGHAM 1st Term Jul 01, 2017 - Jul 01, 2021	Appointing Authority City Council Position Vice-Chair Category Council Appointed				
	VACANCY	Appointing Authority City Council Position Member Category Council Appointed				

Personnel Board Page 1 of 1

Profile White Dorothea "Lynn" First Name Middle Initial Last Name California Department of **Employee Relations Officer** Corrections and Rehabilitation Employer Job Title **Email Address** Primary Phone Alternate Phone Are you 18 years of age or older? (Required) Yes ○ No Question applies to multiple boards Do you live within the City Limits of Merced? (Required) Yes ○ No Street Address Suite or Apt City State Postal Code Question applies to multiple boards Are you a registered voter in the City of Merced? (Required) Yes ○ No Which Council district do you live in? ✓ District 3 Are you currently serving on a Board or Commission? If so, please list: N/A Which Boards would you like to apply for? Personnel Board: Submitted Regional Airport Authority: Submitted Citizens Oversight Committee - Measure C: Appointed

554

Highest Level of Education Completed: *

Communication

The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?

Yes ○ No

If you selected no, please identify how you would like to be contacted:

Interests & Experiences

Tell us about yourself, and why you are applying for this particular Board or Commission:

Would like become more involved in my community by giving back as a volunteer. I have worked in California State service for over 21 years and believe that my experience would be a great asset to the Board or Commission.

Please list your current employer and relevant volunteer experience.

I currently work for the California Department of Corrections and Rehabilitation as the Employee Relations/Disciplinary Officer. I am a current volunteer on the Participatory Budget Committee for Merced district 2, a member of the Merced NAACP, former Vice-President of the California Licensing/Registration Examiners Union that represents State of CA collective bargaining unit 7 (BU07). I represented BU07 employees at legislative hearing on SB 9 Safety Retirement of BU07 employees.

What is your understanding of the roles and responsibilities of this Board or Commission?

My understanding of the roles and responsibilities of this Board or Commission are to review or hear appeals and complaints, make recommendations and also serves in an advisory capacity to the City Council.

Do you have experience or special knowledge pertaining to this Board or Commission?

I am a native of Merced and come from a Ethnically diverse family and background. I was the Administrative/Operations Manager II of the Merced Department of Motor Vehicles and currently the Employee Relations Officer at CDCR. I represent the Department at various Appeals Hearings and Arbitration. I facilitate committee meetings with the 18 various Employee Collective bargaining units that represent over 1000 employees that work at Valley State Prison (VSP). I have represented VSP at Good Cause Hearings for the denial of Carry Concealed Weapon (CCW) permits endorsed by CDCR, Certified Train the Trainer (T4T) Instructor.

Any other comments you would like to add that may assist the City Council in their decision?

Upload a Resume
Requirements
Question applies to multiple boards
AB 1234 Ethics Training
✓ I Agree *
Question applies to multiple boards Attendance Policy
✓ I Agree *
Statement of Economic Interests - FPPC Form 700
✓ I Agree *
Question applies to multiple boards
Oath of Office
✓ I Agree *
Question applies to multiple boards
Public Scrutiny
✓ I Agree *
How did you hear about this vacancy? *
✓ Other
If you selected other, please indicate how you learned about the vacancy:
Mayor Mike Murphy when he addressed the members of the Merced NAACP.

Ethnicity			
Other			
Gender			
Date of Birth			

Submission

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledege.

DLW

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

ADMINISTRATIVE REPORT

Agenda Item K.2. Meeting Date: 9/3/2019

SUBJECT: Request to Add Item to Future Agenda

REPORT IN BRIEF

Provides members of the City Council the opportunity to request that an item be placed on a future City Council agenda for initial consideration by the City Council.



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

ADMINISTRATIVE REPORT

Agenda Item K.3. Meeting Date: 9/3/2019

SUBJECT: City Council Comments

REPORT IN BRIEF

Provides an opportunity for the Mayor and/or Council Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the City and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.