



# 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

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Tuesday, September 12, 2017

6:00 PM

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

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#### Study Session at 6:00 PM

#### A. STUDY SESSION ROLL CALL

#### B. STUDY SESSION

- B.1. [17-462](#)      SUBJECT: Joint Study Session with City Council/Planning  
Commission to Discuss Draft Cannabis Ordinance

#### REPORT IN BRIEF

A joint Study Session with the Planning Commission and City Council to  
discuss Draft Cannabis Ordinance.

#### C. PUBLIC COMMENT

#### D. COUNCIL DIRECTION ON DRAFT CANNABIS ORDINANCE

#### E. ADJOURNMENT



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**File #:** 17-462

**Meeting Date:** 9/12/2017

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**SUBJECT:** Joint Study Session with City Council/Planning Commission to Discuss Draft Cannabis Ordinance

### REPORT IN BRIEF

A joint Study Session with the Planning Commission and City Council to discuss Draft Cannabis Ordinance.

### ATTACHMENTS

1. Updated Dispensary Sales Information from SCI
2. Summary of Draft Ordinance from SCI
3. Draft Ordinance

## State Action Summary related to Dispensary Sales

1. November 8, 2016 - Proposition 64 passes. Removes sales and use tax from medicinal cannabis purchases.
2. May 8, 2017 - SB 94 Submitted to legislature. Removes requirements for State issued medicinal card.
3. June 14, 2017 League of Cities sends letter to all members urging them to contact legislature and ask that the requirements for State issued card be re-instated to protect sales and use tax revenue from medicinal patients.
4. June 27, 2017- SB 94 Signed by Governor.
5. August 7, 2017 - meeting with lobbyist working on revised drafts, expects State issued medicinal card requirement to be re-instated.
6. August 20, 2017 - meeting with second lobbyist also expects State issued medicinal card requirement to be re-instated.
7. Fall 2017 - Bureau of Cannabis Control, State Department of Public Health and State Department of Food and Agriculture expected to release specific regulations enacting the terms of SB 94.

Central Valley County	Medical Marijuana Cards Issued
Merced	24
Fresno	132
Madera	7
Tulare	23
Kings	3
Statewide	6,051

### Oregon Marijuana Evolution:

- Oregon medicinal tax is 0%; Oregon non-medicinal tax is 17%.
- In December 2016, the number of non-medicinal dispensaries was 99. As of August 2017, there are 480 non-medicinal dispensaries.
- In October 2016, there were 424 medicinal dispensaries. That number is now 65 medicinal only dispensaries.

### Options for Merced:

1. Allow only medicinal dispensaries – fewer purchasers, less revenue, businesses may fail.
2. Allow a combination of dispensaries and adjust as the regulations change. Medicinal patients will not pay sales and use tax and can be age 18 and older at medicinal dispensaries. Everyone 21 and older will pay sales and use tax and be able to purchase at non-medicinal dispensaries.
3. Allow only non-medicinal dispensaries – everyone 21 and over can purchase; medicinal patients under 21 will need a caregiver over 21 to purchase; medicinal customers will pay sales and use tax. Revenue will be maximized.

### Summary of Draft Cannabis Ordinance

- Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, I-L and I-H Districts and Planned Developments which have the equivalent General Plan land use designations of those zones per Table 20.44-1 below. Those businesses that are permitted in each zone are noted with a “P”, and those businesses not allowed in each zone are noted with an “X”.
- All commercial cannabis businesses must obtain a Commercial Cannabis Business Permit (CCBP) from the City. The number of medical dispensaries is limited to a maximum of 4.
- The process for obtaining a Commercial Cannabis Business Permit is as follows:
  - For medical dispensaries for which there is a limitation on the number of permits:
    - A 2-step application review process is in place
      - Applications are reviewed by the Director of Development Services for completeness and whether they meet all the City’s requirements. All those that are deemed complete will move onto Phase 2, where a thorough background check of all owners is conducted
      - Phase 2 involves a merit-based review of all applications that passed Phase 1 by a panel of the City Manager, Police Chief, and the Director of Development Services. The panel will recommend the top applicants to move forward with a public hearing before the Planning Commission.
    - Planning Commission public hearings will be held and the projects approved or denied. Appeals to the City Council would be allowed.
  - For all other cannabis businesses with no limitation on the number of permits:
    - There would be no merit-based Phase 2 and all those that pass Phase 1 will go to the Planning Commission for public hearings after extensive background checks.
- Specific operating requirements that address security, product storage and disposal, etc. are provided for all the different types of cannabis businesses (cultivation, manufacturing, distribution, deliveries, and retail sales/dispensaries). Distance requirements from sensitive land uses are also required.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1						Specific Use Standards
	Land Use Classification	C-C Zone	C-O Zone	C-G Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A (0-5000 sf)	X	X	X	X	X	
Cultivator	Greenhouse, Type B (5K-10K sf)	X	X	X	X	X	
Cultivator	Greenhouse, Type C (10K-22K sf)	X	X	X	X	X	
Nursery	Greenhouse, Type D (22K+ sf)	X	X	X	X	X	
Manufacturing	Manufacturing, non-volatile	X	X	X	P	P	
Manufacturing	Manufacturing, volatile	X	X	X	X	X	
Dispensary [1]	Pharmaceutical, medical (4 max)	P	P	P	X	X	
Dispensary	Retail, non-medical	X	X	X	X	X	
Testing Laboratory	No Retail	P	P	P	P	P	
Distribution	Freight/Transport	X	X	X	P	P	

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ORDINANCE NO. **XXXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, REPLACING 20.44.170 (“MEDICAL MARIJUANA AND CULTIVATION”) ; AMENDING SECTION 20.10.020 AND TABLE 20.10-1 (“COMMERCIAL ZONING DISTRICTS”), AND AMENDING SECTION 20.12.020 AND TABLE 20.12-1 (“INDUSTRIAL ZONING DISTRICTS”) OF THE MERCED MUNICIPAL CODE; AND ADDING LAND USE TABLE 20.44-1 TO REGULATE ALL COMMERCIAL CANNABIS ACTIVITIES IN THE CITY OF MERCED**

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

**SECTION 1: Findings.**

The City Council finds and declares as follows:

- A. In 1996, the California electorate approved Proposition 215, the Compassionate Use Act which allows a patient, with a doctor’s recommendation, to use cannabis for medical purposes without the fear of prosecution or arrest; and
- B. In 2003, the California legislature passed Senate Bill 420 (Medical Marijuana Program Act) which amended the Health and Safety Code to permit the establishment of medical cannabis dispensaries for the distribution of cannabis for medical purposes; and
- C. In 2005, the California Board of Equalization began issuing seller’s permits for sales consisting of medical cannabis; and
- D. In 2008, the California Attorney General issued guidelines for the security and non-diversion of cannabis grown for medical use; and
- E. In 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”) further amended in 2016 as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established regulations and a state licensing system for medical cannabis cultivation, manufacturing, delivery, and dispensing; and
- F. In 2016, the voters of the State of California approved and passed Proposition 64 also known as the Adult Use of Marijuana Act (“AUMA”); and
- G. In 2017, the Governor signed into law Senate Bill 94 also known as Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and
- H. Health & Safety Code Section 11362.83 provides that cities are free to adopt and enforce local ordinances that regulate the location, operation, or establishment of medical cannabis; and
- I. The City Council of the City of Merced intends that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, nor to otherwise permit any activity that is prohibited under that Act or other applicable law; and
- J. After studying various alternatives for the regulation of commercial cannabis considering input from stakeholders and a public hearing, and reviewing the legal status of cannabis

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under applicable law, the City Council finds that the regulation of commercial cannabis activities is necessary to protect the public health, safety, and welfare by mitigating the adverse secondary effects from the operations of these uses; and

- K. The City of Merced has a compelling interest in ensuring that cannabis is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which these uses may operate, and in providing access of cannabis to residents; and
- L. The proposed Ordinance has been reviewed by City staff in accordance with the Environmental Checklist Form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would create any significant environmental impacts, and City staff has determined that the establishment of regulations for commercial cannabis businesses do not meet any of the thresholds contained in the Checklist that would trigger a significant environmental impact, and thus according to the “general rule exemption” (Section 15061(b)(3) of the CEQA Guidelines, projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required.

### **SECTION 2: Authority**

This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including by not limited to, Article IX, Section 7 of the California Constitution, the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program (California Health and Safety Code Section 11362.7 et seq.), the Medical Marijuana Regulation and Safety Act (AB 266, AB 243, and SB 643; hereafter “MMRSA”), the Adult Use of Marijuana Act (Proposition 64), and the Medical and Adult Use Cannabis Regulation and Safety Act (SB 94; hereafter “MAUCRSA”).

### **SECTION 3: Purpose and Intent**

The purpose and intent of this section is to regulate commercial cannabis business activities in order to ensure the health, safety and welfare of the residents of the City of Merced by establishing regulations necessary for a commercial cannabis business to obtain and maintain a Commercial Cannabis Business Permit (CCBP). Any commercial cannabis businesses operating in the City of Merced shall at all times be in compliance with current State Law and this ordinance. All commercial cannabis facilities shall operate in accordance with the regulations in this ordinance and with the conditions of approval associated with the applicable zone for the parcel of real property upon which the commercial cannabis activities are conducted. Any commercial cannabis business shall qualify for and receive a Commercial Cannabis Business Permit from the City of Merced as provided by this ordinance and operate only in a zone in compliance with Title 20 of the Merced Municipal Code before commencing with any commercial cannabis activity. Any commercial cannabis business without a Commercial Cannabis Business Permit is in violation of this ordinance. The regulations in this article, in compliance with the Compassionate Use Act, the Medical Marijuana Program Act, SB 94, Proposition 64, and the California Health and Safety Code (collectively referred to as “State Law”) do not interfere with the right to use cannabis or medical cannabis as authorized under State Law, nor do they criminalize the possession or commercial activities of cannabis or medical cannabis as authorized under State Law.

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### **SECTION 4. Amendments of Chapters 20.10 and 20.12.**

Table 20.10-1 “Permitted Land Uses in the Commercial Zoning Districts” in Section 20.10.020 of the Merced Municipal Code and Table 20.12-1 “Permitted Land Uses in the Industrial Zoning Districts” in Section 20.12.020 of the Merced Municipal Code under “Medical Marijuana Dispensaries” shall be amended to read as follows: “Refer to Table 20.44-1 in Section 20.44.170 for Permitted Land Uses for All Commercial Cannabis Business Activities.”

### **SECTION 5. Amendment of Chapter 20.44.170**

The City of Merced hereby repeals Section 20.44.170 (“Medical Marijuana and Cultivation”) of the Merced Municipal Code in its entirety, and replaces it with the amended Section 20.44.170 as set forth below.

#### **20.44.170 – REGULATION OF COMMERCIAL CANNABIS ACTIVITIES – COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED**

##### **20.44.170(A): Zoning Compliance and Commercial Cannabis Business Permit Requirements**

Commercial cannabis activities are expressly prohibited in all zones in the City of Merced; however, specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, I-L and I-H Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. 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.



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Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1						Specific Use Standards
	Land Use Classification	C-C Zone	C-O Zone	C-G Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	X	
Cultivator	Greenhouse, Type B	X	X	X	X	X	
Cultivator	Greenhouse, Type C	X	X	X	X	X	
Nursery	Greenhouse, Type D	X	X	X	X	X	
Manufacturing	Manufacturing, non-volatile	X	X	X	P	P	
Manufacturing	Manufacturing, volatile	X	X	X	X	X	
Dispensary [1]	Pharmaceutical, medical	P	P	P	X	X	
Dispensary	Retail, non-medical	X	X	X	X	X	
Testing Laboratory	No Retail	P	P	P	P	P	
Distribution	Freight/Transport	X	X	X	P	P	

### Footnotes

1 - Four total medical cannabis dispensaries are permitted within the City of Merced

### 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

### 20.44.170(B): Exceptions

Commercial cultivation of cannabis is expressly prohibited in all zones and all specific plan areas in the City; provided, however, that six (6) plants per residence may be cultivated indoors within a legally permitted structure for personal use in compliance with all applicable local and State regulations.

### 20.44.170(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

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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.

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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. **“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.
13. **“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.
14. **“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.
15. **“Display”** means cannabis goods that are stored in the licensed dispensary’s retail area during the hours of operation.
16. **“Display case”** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.
17. **“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.
18. **“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.
19. **“Free sample”** means any amount of cannabis goods provided to a cannabis patient, or purchaser of cannabis, or primary caregiver without cost or payment or exchange of any other thing of value.
20. **“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.
21. **“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.
22. **“Medical cannabis goods”** means cannabis, including dried flower, and manufactured cannabis products.
23. **“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,

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spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

24. **“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.
25. **“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.
26. **“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.
27. **“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.
28. **“Ownership interest”** means an interest held by a person 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.
29. **“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.
30. **“Patient or qualified patient”** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician’s recommendation.
31. **“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.
32. **“Pest”** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.
33. **“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.
34. **“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. The premises shall be a contiguous area and shall only be occupied by one licensee.

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35. **“Pre-roll”** means dried cannabis flower rolled in paper prior to retail sale.
36. **“Primary Caregiver”** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.
37. **“Private security officer”** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.
38. **“Publicly owned land”** means any building or real property that is owned by a city, county, state, federal, or other government entity.
39. **“Purchase”** means obtaining cannabis goods in exchange for consideration.
40. **“Purchaser”** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.
41. **“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.
42. **“Retail area”** means a building, room, or other area upon the licensed dispensary premises in which cannabis goods are sold or displayed.
43. **“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.
44. **“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.
45. **“Sublet”** means to lease or rent all or part of a leased or rented property.
46. **“State”** means the State of California.
47. **“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
48. **“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.

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49. **“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.
50. **“Wholesale”** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

### **20.44.170(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.

### **20.44.170(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 *(Only if City Council wants to allow)*
  - ii. Distribution
  - iii. Manufacturing
  - iv. Retail sales (Dispensary)
  - v. Testing
- b. It shall be unlawful for any person, association, partnership or corporation 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.

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- c. Non-medical commercial cannabis activities are prohibited in the City of Merced
- d. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.
- e. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 each year, unless sooner revoked. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.
- f. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity associated with an individual, who has violated California Health & Safety Code Section 11590 and its provisions.
- g. The Commercial Cannabis Business Permit shall be issued to the specific person or persons listed on the Cannabis Permit Application.
- h. A Commercial Cannabis Business Permit is not transferable, and does not run with the land or with the business. Any change to the business location, organizational structure, or ownership requires a new application with associated fees.

### **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.

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- 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, 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 home, recreational center, youth center, library or public park as required by Section 11362.768 of the Health and Safety Code. For purposes of this subsection only, a public park shall not include any park designated in section 9.70.030 as a bike path.
- g. No physical modification of the licensed premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.



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- h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.
- i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.
- j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.
- k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.
- l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.
- m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building.
- 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 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.
- 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).

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- 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.
- 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

#### **4. Additional Regulations for Dispensary and Retail Sales**

- a. Only four (4) dispensaries shall operate within the Merced City limits, regardless of the location’s compliance with any other Section specified in this ordinance.
- b. No retail cannabis facility may engage in check cashing activities at any time.

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- c. Only one dispensary license 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.
- d. Restrooms shall remain locked during business hours and not open to the public.
- e. 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.
- f. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.
- g. At all times, the cannabis dispensary is open, 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.
- h. Security guards are permitted, but not mandated, to carry firearms.
- i. All cannabis products available for sale shall be securely locked and stored.
- j. 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.
- k. 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 for all patient members.
- l. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.
- m. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week.
- n. Hours of operation shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time unless zoning regulations specify more restrictive hours.
- o. Exterior signage shall be limited to one wall sign not to exceed ten square feet in area and may not be externally or internally illuminated. Interior signage or advertising may not be visible from the exterior.
- p. 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.

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- q. No one under the age of 21 shall be allowed to enter this facility unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.
- r. 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.
- s. No recommendations from a doctor for medical cannabis shall be issued on-site.
- t. Shipments of cannabis goods may only be accepted during regular business hours.
- u. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.
- v. Inventory shall be secured using a lockable storage system during non-business hours.
- w. No cannabis product shall be visible from the exterior of the business.
- x. All required labelling shall be maintained on all product, as required by State law, at all times.

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

- a. 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.
- b. 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.
- c. 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.
- d. Deliveries may only take place during normal business hours of the dispensary.
- e. 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.
- f. The following applies to all deliveries of cannabis products:
  - i. May only be made to a physical address in California.
  - ii. A licensed delivery employee shall not leave the State of California while possessing cannabis products.
- g. 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 required by the State.

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- h. A cannabis business shall only deliver cannabis in aggregate amounts tied to its members' needs. A cannabis business shall ensure compliance with State delivery limits as they regard cannabis and cannabis products.
- i. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.
- j. Any delivery method shall be made in compliance with State law 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).
- k. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed \$3,000 at any time.
- l. Each delivery request shall have a receipt prepared by the dispensary with the following information:
  - i. Name and address of the licensed dispensary
  - ii. The name of the employee who delivered the order
  - iii. The date and time the delivery request was made
  - iv. The complete delivery address
  - v. 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.
  - vi. The total amount paid for the delivery including any fees or taxes.
- m. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

### **20.44.170(F). 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, infusions and extractions.
- 2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.
- 3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.
- 4. Inspections by the City Fire Chief or his designee may be conducting anytime during the business's regular business hours.

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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 within a secure fence at least eight (8) feet in height that fully encloses the manufacturing 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.

### **20.44.170(G). Additional Requirements for Cannabis Cultivation Businesses** *(This section shall be removed if the City Council elects not to allow Cultivation)*

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. All cannabis cultivation activities shall occur within a secure fence at least eight (8) feet in height that fully encloses the cultivation 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.

### **20.44.170(H). 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.

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

### **20.44.170(I). Additional Requirements for Cannabis Distribution Businesses**

1. A licensed cannabis distribution facility shall comply with all State regulations.
2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.
3. Inspections by the City Police Chief or his designee may be conducting 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 cultivation activities shall occur 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.

### **20.44.170(J). Commercial Cannabis Business Permit Selection Process**

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1. 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. The application will be reviewed for completeness by the Director of Development Services or designee.
2. A preapplication conference with the Director of Development Services is strongly encouraged. A preapplication conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.
3. Prior to issuing a Commercial Cannabis Business Permit, the City 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 without regard to the need for zoning compliance. No Commercial Cannabis Business Permit shall be issued otherwise.
4. 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.
5. If the City of Merced does not limit the number of permits available, the Phase 2 step shall not require merit based consideration and the selection panel will make a recommendation to the Planning Commission based on the Phase 1 information and a complete background check of all owners of the proposed business. The decision of the Planning Commission will be final.
6. 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" and shall be notified in writing that they are a "Qualified Commercial Cannabis Business Applicant". The Director of Development Services shall maintain the "Qualified Application List".
7. 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 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. 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.
8. All Cannabis applications received after the initial application period will be placed on the "Waitlist" in the order it is received. Applicants placed on the "Waitlist" shall be notified in writing of their "Waitlist" status.



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9. Cannabis applications placed on the “Waitlist” will be moved to the “Qualified Applicant List” only if the application passes the Phase 1 review and when the number of applicants on the “Qualified Applicant List” falls below five, and will be notified of the change in writing. If the Director of Development Services or designee determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. 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.

### 10. Commercial Cannabis Business Permit Selection - Phase 1 – Initial Review

The Director of Development Services or designee shall determine whether each application on the “Qualified Applicant List” demonstrates compliance with the minimum requirements to be eligible to be entered into the Phase 2 selection process. These requirements include but are not limited to:

- a. All Application documents required in the City's Phase 1 application package.
- b. Application was submitted during the application period.
- c. Application forms are filled out completely.
- d. Business Owner(s) / Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application.
- e. Phase 1 application fee is paid.
- f. 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.

### 11. Commercial Cannabis Business Permit Selection - Phase 2 – Final Review and Scoring

The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees, to make the final decision of successful applicants to recommend to the Planning Commission for the Commercial Cannabis Business Permit. 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. If a merit-based scoring system is required, a complete description of the merit based system and all merit based considerations shall be included with the application forms. Phase 2 requirements include but are not limited to:

- a. Phase 2 application fee is paid and a comprehensive owner background check is completed.

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- b. 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.
- c. The Zoning Administrator or designee has issued a Zoning Clearance documenting compliance with the following:
  - i. The use is permitted;
  - ii. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;
  - iii. No zoning violations exist on the property; and
- d. 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.

### **12. Appeal of Denial of Commercial Cannabis Business Permit**

The Planning Commission will review all Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted. 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 days of receiving the appeal.
- c. Notice of the hearing of the appeal shall be provided to the applicant at least (ten) 10 days prior to the public hearing.
- d. Any interested person may appear and be heard regarding the appeal.
- e. A matter being heard on appeal may be continued for good cause.
- f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

### **13. Commercial Cannabis Business Permit Annual Renewal**

- 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.

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- b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed.

### **14. Appeal of Denial of Commercial Cannabis Business Permit Renewal**

- a. The Development Services Director, in consultation with the Selection Panel 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 days of receiving the appeal.
  - ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 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. A decision of the Planning Commission is final and shall be effective on the date the decision is rendered. At the conclusion of the hearing, the Planning Commission may affirm, reverse or modify the decision appealed. The decision of the Planning Commission shall be the Planning Commission'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.

### **15. Revocation of Commercial Cannabis Business Permit**

- 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.

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- 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.
- 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 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. A decision of the Planning Commission is final and shall be effective on the date the decision is rendered. At the conclusion of the hearing, the Planning Commission may affirm, reverse or modify the decision appealed. The decision of the Planning Commission shall be the Planning Commission'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.

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### **20.44.170(K): 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 licensee 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.

### **20.44.170(L): Enforcement**

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, officer or other person acting for or employed by a licensee within the scope of their employment or office, shall be deemed the act, omission, or failure of the licensee.
2. A licensed 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 dispensary.
  - c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.
  - d. Any other reason to suspect any other breach of security.
3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement

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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 persons related or associated with 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.

### **20.44.170(M): 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.

**DRAFT FOR DISCUSSION ONLY**

**SECTION 6 : 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 7. PUBLICATION.**

The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon. The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the \_\_\_\_ day of \_\_\_\_\_, 2017, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2017, by the following called vote:

**AYES: Council Members:**

**NOES: Council Members:**

**ABSTAIN: Council Members:**

**ABSENT: Council Members:**

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**  
**STEVE CARRIGAN, CITY CLERK**

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

**(SEAL)**

**APPROVED AS TO FORM**

\_\_\_\_\_  
**City Attorney**

\_\_\_\_\_  
**Date**