

CITY OF MERCED
Planning Commission

Resolution #5000

WHEREAS, the Merced City Planning Commission at its regular meeting of November 9, 2022, held a public hearing and considered **Commercial Cannabis Business Permit #22-02R**, initiated by Devon Julian for Culture Merced on Motel Drive, Inc., on behalf of KWP Consulting, property owners. This application is to permit the operation of a retail dispensary, including delivery services, for both medicinal and adult-use cannabis located at 1111 Motel Drive, using an approximately 3,520-square-foot existing building. The property is zoned Thoroughfare Commercial (C-T), with a General Plan designation of Thoroughfare Commercial (CT); also known as Assessor's Parcel Number (APN) 035-101-004; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through O (Exhibit B) of Staff Report #22-840; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #22-04 and approve Commercial Cannabis Business Permit #22-02R, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner White, seconded by Commissioner Gonzalez, and carried by the following vote:

AYES: Commissioners Gonzalez, White, Delgadillo, DeAnda, and
Chairperson Harris

NOES: Commissioners Camper and Greggains

ABSENT: None

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #5000

Page 2

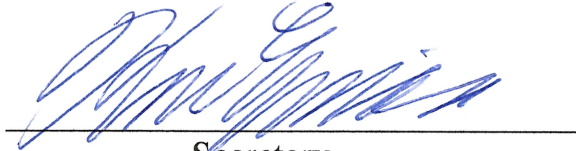
November 9, 2022

Adopted this 9th day of November 2022



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Findings and Considerations

Conditions of Approval
Planning Commission Resolution #5000
Commercial Cannabis Business Permits #22-02R

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibit 2 (floor plan) and Exhibit 3 (elevation)- Attachments C, D, and E of Staff Report #22-840, and all other application materials submitted by the applicant, including business plans, security plans, etc., except as modified by the conditions.
2. All conditions and requirements contained in Merced Municipal Code Section 20.44.170, “Regulation of Commercial Cannabis Activities— Commercial Cannabis Business Permit Required” shall apply, including 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 developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, 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 (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City’s attorney’s fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval

of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment. 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.

4. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
5. 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.
6. 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), as it may be amended or updated from time to time.
7. The details of the property's fencing, security, and screening shall meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
8. The applicant shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment H of Staff Report #22-840) at the time of submittal for building permits for tenant improvements.
9. All plans and supporting documents, including landscape and irrigation plans and a parking lot lighting plan, submitted for Building Permits shall meet or exceed the building codes in effect at the time of building permit application submittal.

10. Plans shall be drawn by a licensed California design professional, meeting current codes at the time of building permit application submittal. Building permit applications submitted after December 31, 2022, shall comply with 2022 California Building Codes.
11. Landscape and irrigation plans shall be drawn in compliance with all City landscape requirements including those under Merced Municipal Code Section 20.36 – Landscaping, which also addresses the Water Efficient Landscape Ordinance under relevant State requirements regarding water efficiency. Details to be reviewed by the Planning Department at the Building Permit stage.
12. All existing landscaping shall be kept healthy and maintained, and any damaged or missing landscaping shall be replaced immediately. Grasses and weeds shall be kept to a maximum of six inches in height or as otherwise required by the Fire Department and County Health Department.
13. 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.
14. Any non-public areas, including cannabis inventory storage room, restrooms, etc., within the retail facility shall be secured from intentional or accidental access by any person not employed, contracted, or otherwise authorized on the premises.
15. Regulatory Fees, as per Resolution #2021-43, are to be paid prior to the issuance of a Certificate of Occupancy and annually thereafter on or before the anniversary date of the business opening. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually (starting January 1) 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.
16. Prior to issuance of a Certificate of Occupancy, applicant shall acquire a City of Merced Business License and provide the City with proof of general liability insurance per requirements.

17. 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 MMC 20.44.170(L)(5), “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.
18. In accordance with MMC 20.44.170 (E)(1)(d), “General Provisions for Commercial Cannabis Activities in the City of Merced,” in the event that this permit is approved after October 1 of any calendar year, the permit shall be valid until December 31 of the following year. In this case, the permit shall be valid until December 31, 2023.
19. Future modifications to the scale, scope, activities, implementation, processes, materials, design, layout, or other factors pertaining to the operation of the project that are consistent with permits to perform activities related to the operation of a retail dispensary of cannabis and cannabis-based products may be authorized with the approval of the Director of Development Services by submitting a request for Minor Modification, in accordance with MMC 20.44.170(L)(7), “Modifications to Commercial Cannabis Business Permit (All Types).”
20. In the event that a proposed Minor Modification is submitted by the applicant that includes an expansion of building space being used, Staff shall reevaluate parking needs and the applicant shall provide additional parking if necessary.
21. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
22. The applicant shall work with the City’s Refuse Department to determine the proper location for a trash enclosure and if a recycling container will be required to comply with AB 341. The container(s) shall be enclosed within a refuse enclosure built to City standards.
23. The parking lot layout shall comply with all applicable City Standards. Applicant shall obtain an encroachment permit with the City Engineering Department if necessary. Parking lot and building lighting shall be

sufficient and shall be shielded or oriented in a way that does not allow “spill-over” or affect the residents located directly across the street.

24. The applicant shall meet the standard parking requirement using the regulation for Retail, General, uses by on-site parking or by obtaining off-site parking at the approval of the Site Plan Committee via a shared parking agreement with an adjacent lot or one that is a maximum of 400 feet from the proposed property, per MMC Section 20.38.040 C – General Requirements.
25. Prior to issuance of certificate of occupancy, the applicant shall provide a cross-access agreement between the subject site (APN: 035-101-004) and the adjacent lot to the west of the subject site (APN: 035-101-003).
26. Appropriate turning radii shall be provided within the parking areas to allow for Fire engine and refuse truck access.
27. Parking lot shall be paved and striped in compliance with the City of Merced City Standards.
28. The applicant shall provide or cause to be provided the necessary Accessible Parking Spaces in accordance with Table 11B-208.2, “Parking Spaces” of the California Building Code, Title 24, Part 2, and shall ensure that the site provides a clear path of travel from the provided accessible parking spaces to the main entrance of the building. Details to be shown on submitted plans at the building permit stage.
29. In accordance with Table 20.38-4, “Required Bicycle Parking Spaces” of the City of Merced Zoning Ordinance, the applicant shall provide or cause to be provided a minimum of 2 short-term bicycle parking spaces and is not required to provide long-term spaces.
30. The applicant shall provide required loading spaces in accordance with Table 20.38-5, “Required Loading Spaces.”
31. Exterior signage shall be limited to no more than twenty square feet. Per MMC 20.44.170(F)(15), interior signage or advertising may not be visible from the exterior. No temporary signs, free-standing “A-frame” or “sandwich board” signs, or window signs shall be allowed. Details to be worked out with Planning staff at the building permit stage.
32. Security practices shall comply with all standards under the State and local standards within MMC Section 20.44.170 E (3) to ensure patrons do not consume cannabis products on-site as well as alcohol, tobacco or food.

33. Prior to approval of building permits, the applicant shall extend the proposed chain-link fence so that deliveries do not enter unsecured areas. Plans shall reflect these revisions.
34. On-site sale of alcohol or tobacco products is prohibited at this location.
35. The use of vending machines to dispense cannabis products is strictly prohibited.
36. Applicant will provide staff with necessary documents for the Community Outreach Meetings, as outlined in the Commercial Cannabis Business Permit application. Inaugural meeting shall be scheduled no later than 2 months after the grand opening.
37. Per MMC 20.44.170(L)(1)(g)(iv), any element of an application, including community benefits, that provided a successful applicant with points on the merit-based scoring system is subject to review and inspection by the City, which may include self-certification by the licensed business, on-site inspection, or other methods of enforcement.
38. Per MMC 20.44.170(P)(1), the business shall provide the City with a notarized statement that the business will enter into, or demonstrate to the City that it has already entered into, and abide by the terms of a Labor Peace Agreement.
39. Per MMC 20.44.170(L)(7)(b)(iii), any business that is awarded points on the merit-based selection criteria for local ownership shall not be approved for any request for Minor Modification that proposes to reduce local ownership below the minimum threshold for which points were awarded in the first place. Per the merit-based points awarded to this application, the minimum amount of local ownership that could be approved through a Minor Modification is 51%.
40. The Pine Street driveways shall be closed and internal access shall be provided in the parking lots on both parcels allowing access only on and off Motel Drive.

Findings and Considerations
Planning Commission Resolution #5000
Commercial Cannabis Business Permits #22-02R

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Thoroughfare Commercial (CT) and the zoning classification of Thoroughfare Commercial (C-T) with approval of a Commercial Cannabis Business Permit.

Land Use Issues

- B) The subject site is 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 is required by Section 11362.768 of the Health and Safety Code and Section 20.44.170(E)(3)(f) of the Merced Municipal Code (MMC) (Attachment F of Staff Report #22-840).

Merit Based Scores and Ranking of Application

- C) The City of Merced received eleven (11) applications for retail cannabis dispensaries in January 2022. Nine (9) applications passed Phase 1 review, succeeding in qualifying for Phase 2 Merit-based review with the Selection Panel, consisting of the City Manager, Police Chief, and Director of Development Services. Those nine (9) applications were reviewed and scored based on merit-based criteria established by the City Council.

A total score of 100 points was possible for each application. Points were awarded based on non-discretionary elements within the applications (a total of 78 points possible), and a total of 22 possible points were reserved for the members of the Selection Panel to award at their discretion based on any outstanding features contained in the application that went above the minimum requirements of the commercial cannabis business permit process. The total scores of the reviewers were divided by three for an average score. The applications were ranked based on that average score. The Selection Panel ranked Culture Merced on Motel Drive, Inc. (Culture Merced) at Number 1 out of 9 places, with an average score of 95.33, the full scoring sheet for this application can be

found at Attachment H of Staff Report #22-840. A Summary of Scores for all the applications can be found at Attachment G of Staff Report #22-840.

Proposed Operations

- D) The proposed dispensary will offer the retail sale of both medicinal and adult-use cannabis products, along with delivery services. The proposed hours of operation within the dispensary shall be daily from 8:00 a.m. to 10:00 p.m., with delivery to be from 9:00 a.m. to 7:00 p.m. Culture Merced anticipates a staff of twenty-five (25) employees, 4 managers, and at least two (2) security guards. Per their own projections, Culture Merced anticipates an average of 250-300 customers per day; their staff will grow as needed.

The proposed business owners plan a 6-month timeline to full build-out following approval of this cannabis business permit, with the bulk of the build-out to occur within the first 4 months. Most of their staff is anticipated to be hired within the final 2 months, prior to the grand opening.

Deliveries

- E) When a scheduled delivery occurs, the inventory manager will receive a notification through the application Treez and will verify the invoice and proceed to follow all State and local requirements of process. Delivery times will occur within the hours of 9:00 a.m. and 7:00 p.m. Per City requirements, no more than \$3,000 worth of products shall be in the vehicle at any time. All deliveries are entered into a manifest with controls to ensure proper delivery to the customer. Deliveries are only made to qualified purchasers and to a qualified address.

Traffic/Circulation

- F) With consideration that this project is proposed on a site within an existing building that has existing access to the City's roadway infrastructure and conforms to the current zoning and land use designation, no concerns related to traffic, or circulation have been raised in relation to this project.

Site Plan/Parking

- G) The applicant is proposing to use the entire space of the existing building at approximately 3,520 square-feet (SF). Ingress to the site is located off Motel Drive with circulation directed out onto Pine Street. The City's

EXHIBIT B

OF PLANNING COMMISSION RESOLUTION #5000

Zoning Code requires one space per 300 SF of floor area for retail use. For this site, the floor area would qualify for approximately 2,040 SF (including the sales floor and the reception area), therefore, the minimum required parking for this site would be 7 spaces. Per the provided site plan found at Attachment C of Staff Report #22-840, the site has a total of 14 existing parking spaces (this includes 4 accessible parking spaces). The site meets and exceeds the City's parking requirements for this use and shall comply with the requirements regarding bicycle and loading spaces per the Ordinance sections identified in Attachment A of Staff Report #22-840 (Conditions #28, 29, and 30). The Building Department has identified concerns with regards to the accessible parking and requests that plans show the installation of a clear and safe path of travel from the accessible parking spaces to the main entrance, per the California Building Code (Condition #28).

Neighborhood Impact/Interface

- H) The subject site is within the Thoroughfare Commercial (C-T) zone, in between two hotels and across the street from single-family homes with the front of the dispensary facing away from the homes and set back approximately 180 feet from the northern property line of the subject site (Attachment B of Staff Report #22-840). The dispensary will be making improvements to the interior and exterior of the building and site as well as bringing a substantial security presence to the area (see Findings I and K below). Based on these factors, City staff believes the dispensary would have minimal negative impact on the surrounding area.

A public hearing notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. As of the date that this report was prepared, staff has not received any comments from the community about this project.

Exterior Elevations

- I) The applicants have proposed to upgrade the exterior of the building as well as improvements to the interior floor plan, plans to be submitted to the City at a later date (Attachment E of Staff Report #22-840). See photographs at Attachment D of Staff Report #22-840 that depict the current building elevation and parking areas along with a rendering of the proposed façade.

Signage

- J) 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. Design to be reviewed at building permit stage (Condition #31).

Safety/Security

- K) The applicant's security plan includes the following provisions:
- Entire property, including parking areas to be under video surveillance 24/7 of at least 1920X1080p (2 MP) resolution, 20 frames per second (FPS), and up to 360-degree field of view (Attachment E of Staff Report #22-840)
 - Video surveillance systems will use removable hard-drives and rack-mounted servers for extensive video storage, made available to the City Police Department when requested.
 - Electronic access controls on all the doors
 - At least two employees will be on-site at all times during regular business hours from opening to closing
 - At least two security guards, hired from a licensed security company, shall be present onsite 24/7, working in 8 and 12-hour shifts
 - Windows will be secure and opaque with a break strength of 400 lbs/inch to protect against breakage
 - 3SI SecurityPac dye packs will be placed strategically to deter burglary and theft
 - Emergency remote panic alarm buttons will be strategically and discreetly located within the dispensary
 - All entrances and windows will be illuminated after sundown to a minimum of 500 lux, with cones of illumination to be oriented in a downward overlapping fashion in case of bulb failure. Motion-activated lighting to be installed at 1,000 lux.
 - All employees will be given keycards with varying and limited access, to be supervised by the designated Security Manager.
 - Secure storage areas will be equipped with two-factor authorization including keycode and card readers.

All security practices shall comply with the standards contained in MMC Ordinance Section 20.44.170 E (3) (Condition #32).

This is not an all-inclusive list of security measures, but simply highlights a few areas. The applicant's security plan meets or exceeds the City's requirements and has been reviewed by the Police Chief through the Merit-Based review (Finding C). Culture Merced proposes to contract with a local, private security firm to ensure security guards shall be present during all operating hours.

Ownership

L) Culture Merced has eight (8) owners with 5% or more interest in the proposed business, with four out of the eight owners being residents of Merced. In order of ownership from highest to lowest:

- Jamie Godinez, 51%
- DBJ La Mesa Corp (Devon Julian), 19%
- Alejandro Calleres, 5%
- Heidi Hanley, 5%
- Allen Holder, 5%
- Barigye McCoy, 5%
- Victor Mancilla, 5%
- Jared Ruscoe, 5%

Each listed owner has performed a Live Scan check and has successfully passed background checks to the satisfaction of the Chief of Police.

According to their application, Culture Merced has at least 10 years of experience in the commercial cannabis industry, with 6 stores open and operating in places such as Long Beach, Calexico, Banning, and Jurupa Valley. The owners have a combined 13 years of experience of management of a legal retail cannabis facility (at least 3 of those years with general retail management).

Community Benefits

M) According to the applicant's application, the proposed dispensary's proposed community benefits include, but are not limited to:

- Designated Chief Communications Officer will implement accessible outreach and feedback programs in the community
- Community Outreach Meetings (Condition #36)

- Public-Neighborhood Outreach program (canvassing to residents within 300-foot radius of the business)
- Donating 2% of their gross receipts to local charitable organizations
- Youth Incubator Program to provide mentorship from Culture team members and local volunteers, showing the youth meaningful guidance and navigation
- Comprehensive Purchaser & Community Education Program to provide open communication between customer and the well-trained staff on products sold at the dispensary through a variety of methods
- Designated Neighborhood Liaison appointed from Culture staff: Jamie Godinez
- Culture Volunteer Program pays for a combined 30 hours of volunteerism from their staff
- Creation of a Culture Community Board to oversee and liaise with other community organizations and organizing the Culture Community Program. Anticipated to meet once a month to plan community events and budgeting of funds toward the program
- Committed \$20,000 per year to support the Merced Food Bank
- Committed \$10,000 per year of Community Benefits funds to the Italo-American Lodge
- Committed \$20,000 to Merced Lodge 1240 Benevolent & Protective Order of Elk (Elk Lodge)
- *Premier Partner* of the League of California Cities League Partner Program

Proposed community benefits that the applicant includes in their proposal shall be verified by staff either prior to or during the biannual inspection (Condition #37).

Modification to Operations

- N) City staff recognizes that the details of operating a business, particularly one in a developing sector such as cannabis and cannabis-based products, requires continual updating of business practices, methodologies, and tools, the modification of which may require alterations to the configuration of the equipment, setup, or layout of the facility. In order to allow for these changes while maintaining the safety of all parties involved, modifications to the permit in the course of the retail sales of

cannabis and cannabis-based products may be requested by the applicants by submitting a request for Minor Modification, in accordance with MMC 20.44.170(L)(7), “Modifications to Commercial Cannabis Business Permit (All Types)” (Conditions #19 and #20).

Environmental Clearance

- O) The project proposes to utilize an existing building on a 16,381 square-foot parcel. Planning staff has conducted an environmental review (Environmental Review #22-04) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) is being recommended (Attachment J of Staff Report #22-840).