

CITY OF MERCED
Planning Commission

Resolution #4112

WHEREAS, the Merced City Planning Commission at its regular meeting of June 7, 2023, held a public hearing and considered **Commercial Cannabis Business Permits #22-12, #22-13, and #22-14**, initiated by John Bodo, on behalf of Ooibodomerced, LLC, property owner. These applications involve a request to permit indoor Cultivation operations and Distribution of cannabis and cannabis-based products within an existing building located on an approximately 11.29-acre lot at 1 West Avenue (also known as 16 Eagle Street). The property is zoned Light Industrial (I-L), with a General Plan designation of Manufacturing Industrial (IND); also known as Assessor's Parcel Number (APN) 059-420-078; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through K (Exhibit B) of Staff Report #23-418; 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 #22-49 and approve Commercial Cannabis Business Permits #22-12, #22-13, and #22-14, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

ATTACHMENT A

PLANNING COMMISSION RESOLUTION #4112

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June 7, 2023

Adopted this 7th day of June 2023

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 #4112
Commercial Cannabis Business Permits #22-12, #22-13, and #22-14

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plans) and Exhibit 2 (floor plans) - Attachment C of Staff Report #23-418, 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.
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 proposed project shall provide that all cultivation and distribution activities occur indoors within a fully enclosed and secure structure, and ensure that the property on which the structure sits is secure and appropriately screened. The details of the property's fencing, security, and screening are to meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
8. The applicant shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment F of Staff Report #23-418) at the time of submittal for building permits for tenant improvements.
9. 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.

10. The facility operated by the applicants shall be secured from intentional or accidental access by any person not employed, contracted, or otherwise authorized on the premises, including any tenants of other buildings on the same property.
11. Fire sprinklers shall be modified to accommodate the building configuration and process configuration prior to occupancy.
12. 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. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually to account for inflation by using the Consumer Price Index (CPI). In no event, shall the fees in any year be less than the preceding year.
13. Prior to issuance of a Certificate of Occupancy, applicant shall acquire a City of Merced Business License.
14. 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.
15. 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 cultivation and/or distribution 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)".
16. 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.

17. The property shall be gated in accordance with MMC Section 20.44.170(I)(7).
18. Prior to installation of a gate, the Applicant shall coordinate with the City Fire Department to ensure there will be a minimum 22-foot-wide clearance for emergency vehicles to pass through when the gate is opened. If the gate requires manual operation, the applicant shall provide a Knox padlock, prior to issuance of a Certificate of Occupancy. If the gate requires electronic operation, prior to issuance of a Certificate of Occupancy, the applicant shall provide a Knox override switch with "Click-to-Enter." Access to this equipment shall be provided to the City of Merced Police, Fire, and Refuse Departments.
19. Prior to commencement of cannabis growing activities, applicant shall provide an estimated volume of City water to be used annually to the City Water Department, and shall have floor plans, equipment, material sheets, and such other materials/plans/permits as deemed necessary approved by the Chief Building Official and Fire Chief.
20. 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.
21. 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 3 short-term and 3 long-term bicycle parking spaces.
22. The applicant shall provide required loading spaces in accordance with Table 20.38-5, "Required Loading Spaces."
23. Signage shall be limited to no more than fifty square feet and must comply with MMC 20.44.170(I)(2) that no exterior evidence of cannabis cultivation shall be visible from the public right-of-way. The display of the name of the facility shall not be construed on its own to provide such evidence. Details to be worked out with Planning staff.
24. In the future, if there are excessive calls received by the Development Services division related to problems including, but not limited to, excessive odor, the approval may be subject to review and revocation by the City of Merced (Finding F).

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4112

Findings and Considerations
Planning Commission Resolution #4112
Commercial Cannabis Business Permits #22-11, #22-12, and #22-13

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Manufacturing Industrial (IND) and the zoning classification of Light Industrial (I-L) 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) (refer to Attachment E of Staff Report #23-418).

Proposed Operations

- C) The applicant intends to establish and operate an indoor cultivation and distribution facility for cannabis and cannabis-based products. CCBP #22-13 and #22-14 would allow cultivation operations which would span across two designated areas within the existing building (totaling 79,200 square-feet of space within the existing 126,099 square-foot building) and will be comprised of a total of twenty-one (21) cultivation rooms [7 under one permit (CCBP #22-13) and 14 under the second permit (CCBP #22-14)], a nursery, harvest storage and drying room will be included under each proposed cultivation permit. Under CCBP #22-13 (cultivation), the cannabis plants will be located on three tiered 100-foot x 4-foot rolling benches, on a drip system; and under CCBP #22-14 (cultivation), the cannabis plants will be located on three tiered 60-foot x 4-foot rolling benches, on a drip system. For the distribution operations (CCBP #22-12), the applicant is anticipating 6-8 employees; for the cultivation operations, the applicant is anticipating a total of 14-20 employees.

Traffic/Circulation

- D) As the project is proposed in an existing building with existing access to

the City's roadway infrastructure, and due to conformity with the zoning and land use for the site, no concerns related to traffic or circulation have been raised as a result of this project.

Parking

- E) With the proposed building at approximately 126,099 SF, the Applicant is proposing to use approximately 90,529 SF of this building. Using the parking regulation for Warehousing, Wholesaling, and Distribution at 1 space per 2,000 square feet of floor area and calculating for each use: the total number of required parking spaces is 46. The total existing parking spaces existing onsite is 57, therefore there should be ample parking spaces to fulfill all uses on the lot. Bicycle parking spaces, Accessible spaces, and Loading Spaces shall be provided as required in Conditions #20, #21, and #22.

Neighborhood Impact/Interface

- F) The subject site is surrounded by industrial uses to the north, south, and west of the property and low-medium density residential uses to the east across West Avenue. The proposed site and the adjacent residential properties are separated by West Avenue; however, the applicant shall make odor control a priority by maintaining all operations indoors and utilizing sufficient odor absorbing ventilation and exhaust systems in compliance with MMC 20.44.170E(3)(m) (Condition #24).

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.

Signage

- G) Any future permanent signage must comply with Condition #23 and is limited to 50 square feet maximum. Any signs shall not provide evidence of cannabis cultivation activities. The display of the name of the facility shall not be construed on its own to provide such evidence.

Safety/Security

- H) The proposed security plan shall maintain compliance with State and Municipal regulations including fire and burglar alarm procedures and camera placement (Attachment C of Staff Report #23-418).

Ownership

- I) All three permits are under one owner, John Bodo; Mr. Bodo holds 100% ownership of all three proposed cannabis businesses. He has performed a Live Scan check and has successfully passed a background check to the satisfaction of the Chief of Police.

Modification to Operations

- J) 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 cultivation and/or distribution 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 #15 and #16).

Environmental Clearance

- K) The project proposes to utilize an existing building, on a site comprised of approximately 11.29 acres. Planning staff has conducted an environmental review (Environmental Review #22-49) 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 G of Staff Report #23-418).