

**CITY OF MERCED**  
**Planning & Permitting Division**

**STAFF REPORT: #16-11**

**AGENDA ITEM: 4.1**

**FROM &** Kim Espinosa,  
**PREPARED BY:** Planning Manager

**PLANNING COMMISSION**  
**MEETING DATE:** May 18, 2016

**CITY COUNCIL**  
**MEETING DATE:** July 5, 2016  
(Tentative)

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**SUBJECT:** **Zoning Ordinance Amendment #16-02**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Chapter 20.84, “Medical Marijuana and Cultivation,” and Chapter 20.20, “Professional/Commercial Office,” to the Merced Municipal Code to allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office designations by Conditional Use Permit subject to certain restrictions; allow commercial deliveries of medical marijuana in the City; and to allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line. \*PUBLIC HEARING\*

**ACTION:** **PLANNING COMMISSION:**

Recommendation to City Council

- 1) Environmental Review #16-12 (Negative Declaration)
- 2) Zoning Ordinance Amendment #16-02

**CITY COUNCIL:**

Approve/Disapprove/Modify

- 1) Environmental Review #16-12 (Negative Declaration)
- 2) Zoning Ordinance Amendment #16-02

**SUMMARY**

Due to recent direction from the City Council, City staff has prepared an Ordinance (Attachment A) to amend Chapter 20.84 “Medical Marijuana and Cultivation” and Section 20.20.040 “Conditional Uses” (Professional/Commercial Office Zone) of the Merced Municipal Code to allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations (Attachment B) by Conditional Use Permit subject to certain restrictions; allow commercial deliveries of medical marijuana in the City; and to allow the cultivation of 12 immature plants or

6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line.

### **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend approval to the City Council of a Negative Declaration (Initial Study #16-12—Attachment H) and Zoning Ordinance Amendment #16-02 (including the adoption of the Resolution at Attachment I) as described in Attachment A.

### **PROJECT DESCRIPTION**

The City of Merced is proposing to adopt an Ordinance (Attachment A) to amend Chapter 20.84 “Medical Marijuana and Cultivation” and Section 20.20.040 “Conditional Uses” (Professional/Commercial Office Zone) of the Merced Municipal Code to allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations (Attachment B) by Conditional Use Permit subject to certain restrictions; allow commercial deliveries of medical marijuana in the City; and to allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line.

### **BACKGROUND**

#### **State of California**

In 1996, California voters adopted the Compassionate Use Act (“CUA”) as a ballot initiative, codified at Health and Safety Code Section 11362.5. The CUA provides a limited defense from prosecution for cultivation and possession of marijuana. In 2003, the Legislature adopted the Medical Marijuana Program Act (“MMP”), codified at Health and Safety Code sections 11362.5 to 11362.83. The MMP provides qualified persons, primary caregivers, and holders of valid identification cards a defense to certain enumerated marijuana-related state crimes.

The California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes. Rather, the statutes set up limited defenses to state criminal prosecution. The manufacture, distribution, or possession of marijuana remains unlawful and a federal crime under the Federal Controlled Substance Act.

In 2013, the California Supreme Court confirmed a city’s ability to prohibit medical marijuana dispensaries within its boundaries. The court found that the CUA and MMP do not preempt a city’s local regulatory authority. Two more decisions, *Maral v. City of Live Oak*, 221 Cal.App.4th 975 (2013) by the Court of Appeal and the 5<sup>th</sup> Appellate District’s 2015 decision in *Kirby v. County of Fresno*, further upheld local government’s authority to regulate land use.

On October 9, 2015, Governor Jerry Brown signed into law three bills (AB 266, AB 243, and SB 643) that together are entitled the Medical Marijuana Regulation & Safety Act (MMRSA). The

three bills established a comprehensive regulatory structure around the state's multi-billion dollar medical marijuana industry.

The legislation creates a dual licensing structure that requires a state and local license or permit in order to cultivate, dispense, or transport medical marijuana. Cities that wish to ban these land use activities are allowed to do so. However, if there is no local licensing requirement, the State Department of Food and Agriculture becomes the sole licensing authority. AB 243 originally included a provision stating that cities that did not regulate or prohibit cultivation before March 1, 2016, would lose the authority to regulate or ban cultivation within their city limits.

In response to this original language in AB 243, the League of California Cities recommended cities immediately adopt an ordinance to ban or regulate the cultivation of medical marijuana to avoid losing local control of land use regulations. Because of the considerable lead time required for these ordinances to go into effect before March 1, 2016, cities had very limited time in which to consider this issue prior to the March 1, 2016, deadline.

#### City of Merced

Merced has historically banned all medical marijuana uses within the City (including medical marijuana dispensaries) based upon the language of Merced Municipal Code Section 20.06.050(E) that provides:

*"No use that is prohibited, unlawful, violates or is inconsistent with federal or state law, or any provision in this code, shall be allowed or permitted in any district under this title."*

Based upon those existing policies, City staff presented an ordinance for consideration by the Planning Commission that would have prohibited all commercial medical marijuana uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced; and prohibited the cultivation of any amount of marijuana for medical use by a qualified patient in all zones and specific plan areas in the City of Merced.

The Planning Commission considered the proposed ordinance at a public hearing held on December 9, 2015. After extensive deliberations, the Planning Commission recommended by a 6-0-1 vote (6 ayes, 0 noes, 1 absent) that the City Council adopt the ordinance after the following changes had been made to it:

- a) Allow medical marijuana dispensaries in some commercial zones (those zones to be determined by staff); and,
- b) Allow delivery of medical marijuana if it begins within one of those allowed commercial zones; and,
- c) Consistent with the regulations of the County, allow the growth of up to 12 medical marijuana plants for personal use per lot.

City staff prepared a new ordinance consistent with the direction of the Planning Commission.

At its meeting on January 4, 2016, the City Council first held a study session on medical marijuana issues and then subsequently held a public hearing regarding medical marijuana. After taking public testimony and extensive deliberations, the City Council voted 7 to 0 to introduce Ordinance No. 2454, which prohibits all commercial medical marijuana uses in the City and prohibits cultivation of marijuana for medical use by a qualified patient or primary caregiver. However, as

part of the motion introducing Ordinance No. 2454, the City Council directed staff to schedule multiple study sessions after the effective date of the ordinance to consider the City's options relating to medical marijuana within the City (including dispensaries, delivery, and cultivation). On January 19, 2016, the City Council adopted Ordinance No. 2454, which became effective 30 days later on February 18, 2016.

On March 1, 2016, the City held a special meeting to discuss medical marijuana. At that meeting, the City Council took public testimony and considered issues relating to medical marijuana dispensaries (including information regarding the 6 commercial zones in the City), delivery of medical marijuana from licensed dispensaries, and if medical marijuana would be allowed to be cultivated within the City by primary caregivers or qualified patients.

At that meeting, the City Council asked that staff provide answers to specific questions at the next meeting regarding medical marijuana, including information regarding the 2008 Attorney General's guidelines on medical marijuana; a summary of regulations from other jurisdictions; a summary of problems that other cities are having with dispensaries; general information about THC and CBD, substances found in marijuana; the availability of labs to test medical marijuana and how are they regulated; an outline of Merced County's Public Health Department's process for obtaining a medical marijuana identification card; the actual number of medical marijuana users in Merced; and the percentage of chemotherapy patients that do not respond to regular anti-nausea drugs. A copy of the City Council Administrative Report (without Attachments) with the answers to those questions is included at Attachment G, but most of the Attachments to the City Council Report are not included (except Attachment 4, which is included) since the information is summarized in the report itself. If the Commission would like a copy of those other Attachments, please let City staff know. (The Attachments are also available on the City's website at <https://cityofmerced.legistar.com/Calendar.aspx> )

On April 20, 2016, the City Council held a second special study session on medical marijuana and was asked to provide guidance on the following questions:

- 1) Does the City Council wish to allow medical marijuana dispensaries within the City?
- 2) If so, in which zone(s) would dispensaries be allowed?
- 3) If dispensaries are allowed, does the City Council wish to place a limit on the number of dispensaries within the City?
- 4) Does the City Council wish to allow deliveries of medical marijuana within the City?
- 5) Does the City Council wish to allow the cultivation of medical marijuana within the City by a primary caregiver or qualified patient?
- 6) If so, will the cultivation be allowed indoors, outdoors, or both?
- 7) If cultivation is allowed, how many plants or square footage of cultivation will be allowed per lot or per dwelling unit? Options include, but are not limited to:
  - a) A specific number of plants per legal lot or parcel.
  - b) A specific number of plants within a single private residence or upon the grounds of that residence.
  - c) A specified square footage for indoor and/or outdoor growing of medical marijuana.

After extensive public testimony and discussion by the City Council, the City Council directed staff to prepare an Ordinance based on the City Council's answers to the above questions. The Draft Ordinance at Attachment A is based on this direction.

## **FINDINGS/CONSIDERATIONS:**

### **General Plan Policies Related to This Application**

- A) The proposed zoning ordinance amendment would make changes in response to City Council direction on April 20, 2016. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

### **General Overview of Proposed Changes to the Zoning Ordinance**

- B) The City of Merced is proposing to adopt an Ordinance (Attachment A) to amend Chapter 20.84 "Medical Marijuana and Cultivation" and Section 20.20.040 "Conditional Uses" (Professional/Commercial Office Zone) of the Merced Municipal Code as follows:
- 1) To allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations (Attachment B) by Conditional Use Permit subject to certain restrictions as described in Finding C below; and,
  - 2) To allow commercial deliveries of medical marijuana in the City with limited hours; and,
  - 3) To allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line as described in Finding E below.

### **Medical Marijuana Dispensaries**

- C) As proposed, the ordinance would allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations (Attachment B) by Conditional Use Permit, but would also place restrictions on medical marijuana dispensaries as follows:
- 1) The proposed dispensary could not be located within 600 feet of the property line of any kindergarten, elementary school, middle school, or high school (consistent with State law) (see map at Attachment C); and,
  - 2) The proposed dispensary could not be located within 500 feet of the property line of any public park that includes playgrounds, active play areas, and/or sports fields (not including bike paths) (see map at Attachment D); and,
  - 3) The proposed dispensary could not be located within 500 feet of the property line of any youth center, City-owned and operated recreational center, or public library (see map at Attachment E); and,
  - 4) No more than four dispensaries shall be authorized to operate in the City at any given time; and,
  - 5) Dispensaries must obtain a license from the State of California to operate a dispensary prior to opening for business at a specific location in the C-O zone.

Please note that the maps above are included for illustrative purposes only and contain information that is current only up to the date of this staff report. This information is subject to change over time. Confirmation of the distance that any proposed dispensary is located away from schools, parks, and other uses will need to be confirmed at the time of Conditional Use Permit application.

### **Medical Marijuana Deliveries**

- D) As proposed in regards to deliveries, the ordinance would allow only licensed dispensaries be authorized to make medical marijuana deliveries within the City of Merced and such deliveries shall occur solely between the hours of 8 a.m. and 7 p.m.

### **Medical Marijuana Cultivation for Personal Use**

- E) As proposed in regards to cultivation, commercial cultivation is prohibited in all zones in the City; however, 12 immature or 6 mature plants may be cultivated indoors or outdoors on any lot in the City if the owner, lessee or tenant of the lot is the primary caregiver or the qualified patient and the cannabis is intended for the qualified patient. However, any plants cultivated outdoors shall not be visible from the public right-of-way and shall not be located within 5 feet of the property line. In addition, no fences (whether temporary or permanent) shall be constructed at a height no greater than 6 feet to screen marijuana plants from the public right-of-way, unless City regulations only authorize a fence of a lesser height and in that case, the fence shall conform to that lesser height requirement.

### **Timetable for Ordinance Consideration/Adoption**

- F) This proposed ordinance will be considered by the Planning Commission at a public hearing on May 18, 2016. A public hearing before the City Council will likely be scheduled for July 5, 2016, with a second reading on July 18, 2016. The ordinance, if approved, would become effective 30 days after that or on August 17, 2016. Prior to the effective date of the ordinance, if adopted, City staff will need to establish guidelines for the application and adoption process for the four (4) Conditional Use Permits for dispensaries. The Planning Commission will be the issuing authority for those Conditional Use Permits, with any appeals to be decided by the City Council.

### **Professional/Commercial Office (C-O) Zoning District**

- G) The Professional/Commercial Office (C-O) Zoning District (Attachment F) allows a variety of medical and dental offices, administrative offices, professional offices for lawyers, engineers, and architects, financial offices, schools for the arts, therapeutic offices, and massage therapy (sole practitioners) as principally permitted uses. Conditional uses include hospitals, mortuaries, multi-family uses, pharmacies, day care facilities, bail bonds, and beauty salons. On April 20, 2016, the City Council directed City staff to prepare an ordinance to allow medical marijuana dispensaries as conditional uses in the C-O zone, indicating that these uses should be located in areas where medical pharmacies and medical offices are located.

- H) City staff prepared a map (Attachment B) that shows where the Professional/Commercial Office (C-O) zoning districts are currently located in the City along with the corresponding General Plan designations so the Planning Commission can see both existing and future areas which may have those zoning designations. (It should be noted that since many commercial areas are actually zoned Planned Development, one must look at the General Plan designation in order to see which zoning district it is equivalent to.) For example, the map shows where all the existing C-O zones are in the City along with the location of Professional/Commercial Office (CO) General Plan designations and any Planned Development zones with a CO General Plan designation. As general plan amendments, zone changes or annexations occur, this map is subject to change.

### **Environmental Clearance**

- I) The Planning staff has conducted an environmental review (Initial Study # 16-12) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Negative Declaration (i.e., no significant adverse environmental effects have been found) is being recommended (see Attachment H).

### **Attachments:**

- A) Proposed Ordinance
- B) Map of areas with Commercial/Professional Office Zoning and/or General Plan Designations
- C) Map showing 600 Foot Buffer around Schools
- D) Map showing 500 Foot Buffer around Parks
- E) Map showing 500 Foot Buffer around Youth/Rec Centers and Libraries
- F) C-O Zoning District Regulations
- G) City Council Administrative Report for April 20, 2016 (without Attachments, except for Attachment 4)
- H) Initial Study #16-12
- I) Draft Planning Commission Resolution

KE: Projects\2016\Comp Zoning Ord Update\ZOA 16-02-Medical Marijuana 2\ZOA 16-02 Medical Marijuana-PC Staff Rpt 16-11-May18-2016.doc

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING CHAPTER 20.84, “MEDICAL  
MARIJUANA AND CULTIVATION” AND  
AMENDING SECTION 20.20.040 “CONDITIONAL  
USES,” OF THE MERCED MUNICIPAL CODE  
REGARDING THE ZONING OF MEDICAL  
MARIJUANA DISPENSARIES AS CONDITIONAL  
USES**

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

**SECTION 1. AUTHORITY.** This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to, Article XI, 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 § 11362.7 et seq.), and The Medical Marijuana Regulation and Safety Act (AB 266, AB 243, and SB 643; hereafter “MMRSA”).

**SECTION 2. AMENDMENT OF CHAPTER 20.84.** Chapter 20.84, Medical Marijuana and Cultivation,” is amended to read as follows:

**“Chapter 20.84  
MEDICAL MARIJUANA AND CULTIVATION**

**Section:**

- 20.84.010 Definitions.**
- 20.84.020 Regulations.**
- 20.84.030 Public Nuisance.**
- 20.84.040 Civil Penalties.**



## **20.84.010 Definitions.**

‘Cannabis’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as the same may be amended from time to time.

‘Caregiver’ or ‘primary caregiver’ shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

‘Commercial cannabis activity’ shall have the same meaning as that set forth in Business and Professions Code Section 19300.5(k) as the same may be amended from time to time.

‘Cultivation’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as the same may be amended from time to time.

‘Delivery’ or ‘deliveries’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as the same may be amended from time to time.

‘Dispensary’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as the same may be amended from time to time. ‘Dispensary’ shall not include the following uses:

- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code,
- (2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code,
- (3) A residential care facility for persons with chronic life-threatening illnesses licensed pursuant

to Chapter 3.01 of Division 2 of the California Health and Safety Code,

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code,

(5) A residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

‘Medical cannabis,’ ‘medical cannabis product,’ or ‘cannabis product’ shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

‘Medical Marijuana Regulation and Safety Act’ or ‘MMRSA’ shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

‘Qualifying patient’ or ‘Qualified patient’ shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

#### **20.84.020 Regulations.**

A. Commercial cannabis activities are expressly prohibited in all zones in the City of Merced; provided, however, medical marijuana dispensaries are allowed as a conditional use in the C-O District and Planned Developments which have the equivalent General Plan land use designations of this zone, subject to the restrictions of Section 20.84.020(B) and the limitations of Section 20.84.020(C) on the number of dispensaries that may be authorized within the City at any given time. Any conditional use permit issued for a dispensary shall include conditions to protect the public health, safety and welfare and to minimize the secondary effects, if any, of

the dispensary. Before a dispensary may open for business within the City, the operator of the dispensary must also have a license from the State of California to operate a dispensary at a specific location within the C-O District.

B. A dispensary shall not be approved in the C-O District if any following conditions apply:

i. The proposed dispensary would be located within 600 feet of the property line of any kindergarten, elementary school, middle school or high school.

ii. The proposed dispensary would be located within 500 feet of the property line of any public park that includes playgrounds, active play areas and/or sports fields. For purposes of this subsection only, a park shall not include any park designated in Section 9.70.030 as a bike path.

iii. The proposed dispensary would be located within 500 feet of the property line of any youth center, City-owned and operated recreational center or public library.

The Planning Commission or City Council on appeal may consider other factors not specifically stated in this Section 20.84.020(B) in determining whether to approve or disapprove a conditional use permit application for a dispensary.

C. Notwithstanding any language in this Section 20.84.020 to the contrary, no more than four dispensaries shall be authorized to operate in the City at any given time. If four dispensaries are authorized to locate within the City, then no additional conditional use permits shall be approved to operate a dispensary within the City.

D. Only licensed dispensaries are authorized to make medical marijuana deliveries within the City of Merced.

Such deliveries shall occur solely between the hours of 8 a.m. and 7 p.m.

E. Cultivation of cannabis for commercial purposes is expressly prohibited in all zones and all specific plan areas in the City of Merced; provided, however, that 12 immature plants or 6 mature plants may be cultivated indoors or outdoors on any lot if the owner, lessee or tenant of the lot is the primary caregiver or the qualified patient and the cannabis is intended for the qualified patient. Any such authorized cultivation shall also be subject to the restrictions set forth in Section 20.84.020(F).

F. Any marijuana plants cultivated outside pursuant to Section 20.84.020(E) shall not be visible from the public right-of-way and shall not be located within five feet of any property line. In addition, no fences (whether temporary or permanent) shall be constructed at a height greater than six feet to screen marijuana plants from the public right-of-way; provided, however, that nothing in this Section 20.84.020(F) shall authorize the construction of a fence at a height greater than is otherwise allowed by City regulations.

#### **20.84.030 Public Nuisance.**

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter 20.84 shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.

#### **20.84.040 Civil Penalties.**

In addition to any other enforcement permitted by this Chapter 20.84, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Chapter. In any civil action

brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorney fees and costs to the prevailing party.”

**SECTION 3. AMENDMENT OF SECTION 20.20.040.** Section 20.20.040, “Conditional Uses,” is hereby amended to read as follows:

**“20.20.040 Conditional uses.**

The following are conditional uses:

- A. Public and quasipublic uses appropriate to the district, such as hospitals, convalescent or nursing homes and professional, business and technical schools;
- B. Mortuaries and crematories;
- C. R-4 district residential uses subject to all restrictions and requirements of that district;
- D. Public utility uses, substation, and communication equipment buildings;
- E. Signs for single occupant in excess of the allowable area, but not to exceed fifty (50) square feet per lot;
- F. Prescription pharmacies, without variety goods;
- G. Bail bond businesses;
- H. Day care facilities for more than twelve children;
- I. Day care facilities for the elderly of twelve or fewer persons;
- J. Beauty salons, barber shops, tanning salons, and nail salons;
- K. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44; and

L. Medical marijuana dispensaries, subject to the restrictions of Section 20.84.020(C) regarding number of dispensaries allowed within the City.”

**SECTION 4. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 5. PUBLICATION.** The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the \_\_\_\_ day of \_\_\_\_\_, 2016, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2016, 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)**

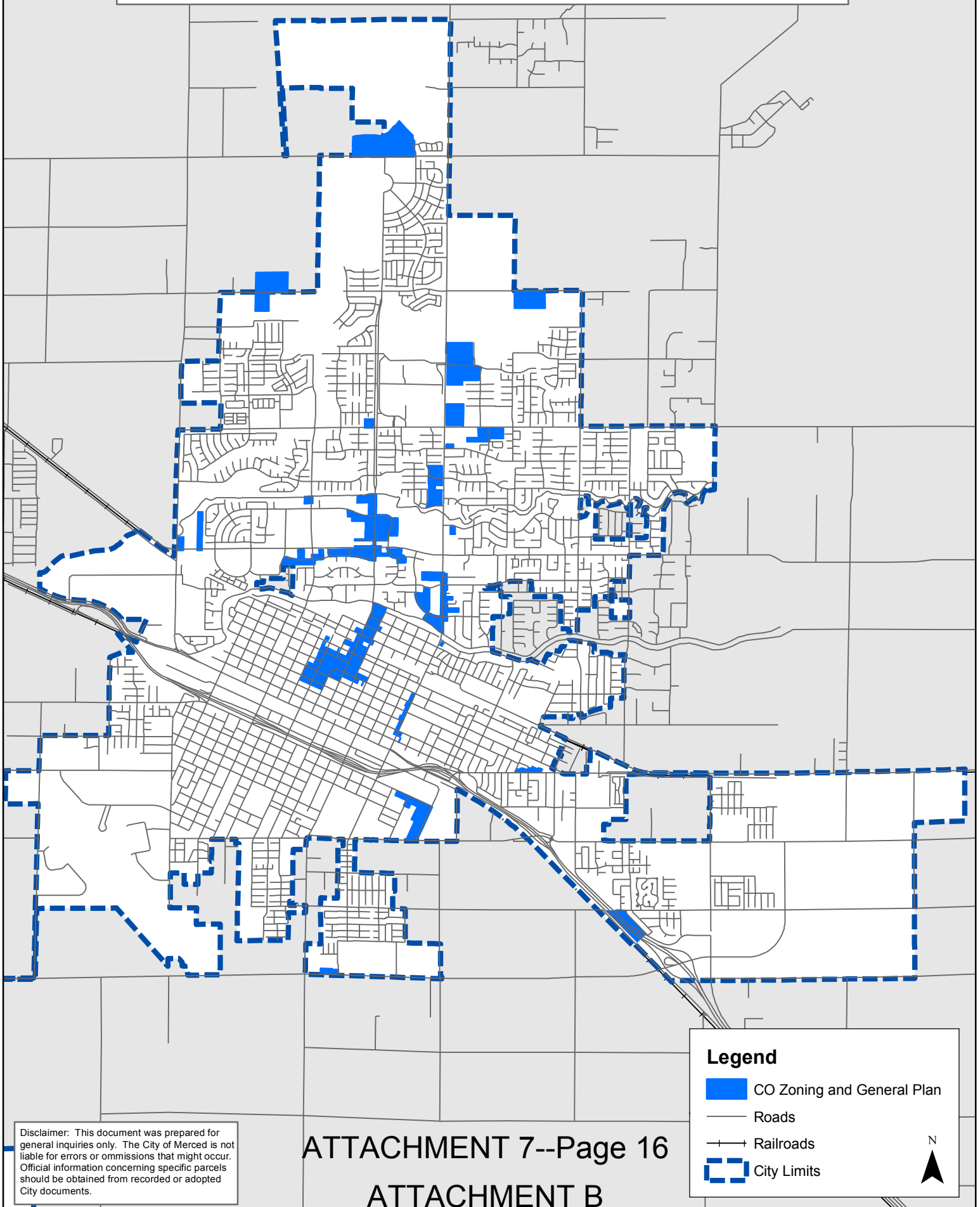
**APPROVED AS TO FORM**

Ker Rye      4/29/16  
**City Attorney**                      **Date**

**ATTACHMENT 7--Page 15**





**ATTACHMENT A--Page 8**

# Professional/Commercial Office (CO)



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## Legend

-  CO Zoning and General Plan
-  Roads
-  Railroads
-  City Limits

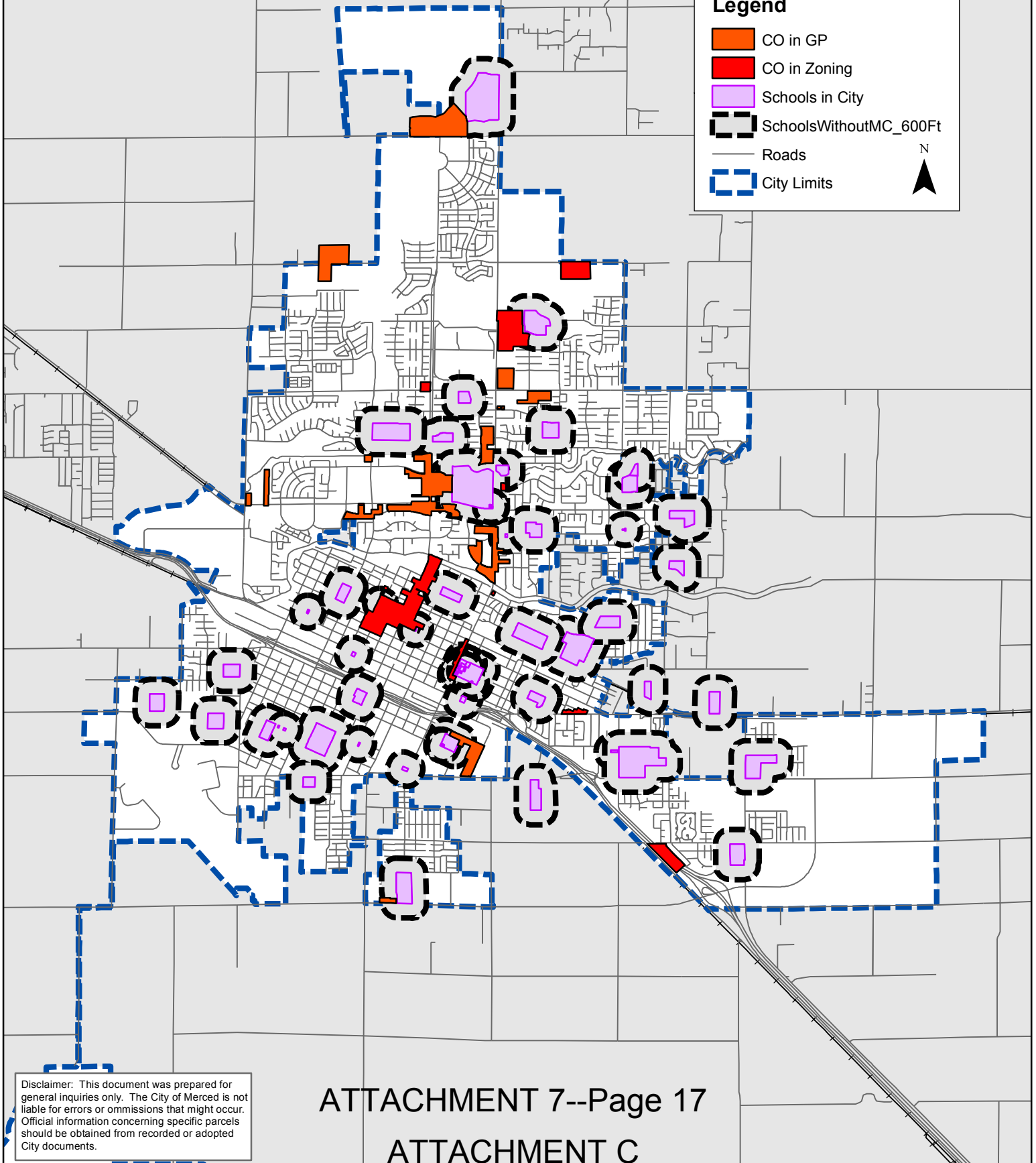




# Schools-600 Ft Buffers

## Legend

- CO in GP
- CO in Zoning
- Schools in City
- SchoolsWithoutMC\_600Ft
- Roads
- City Limits

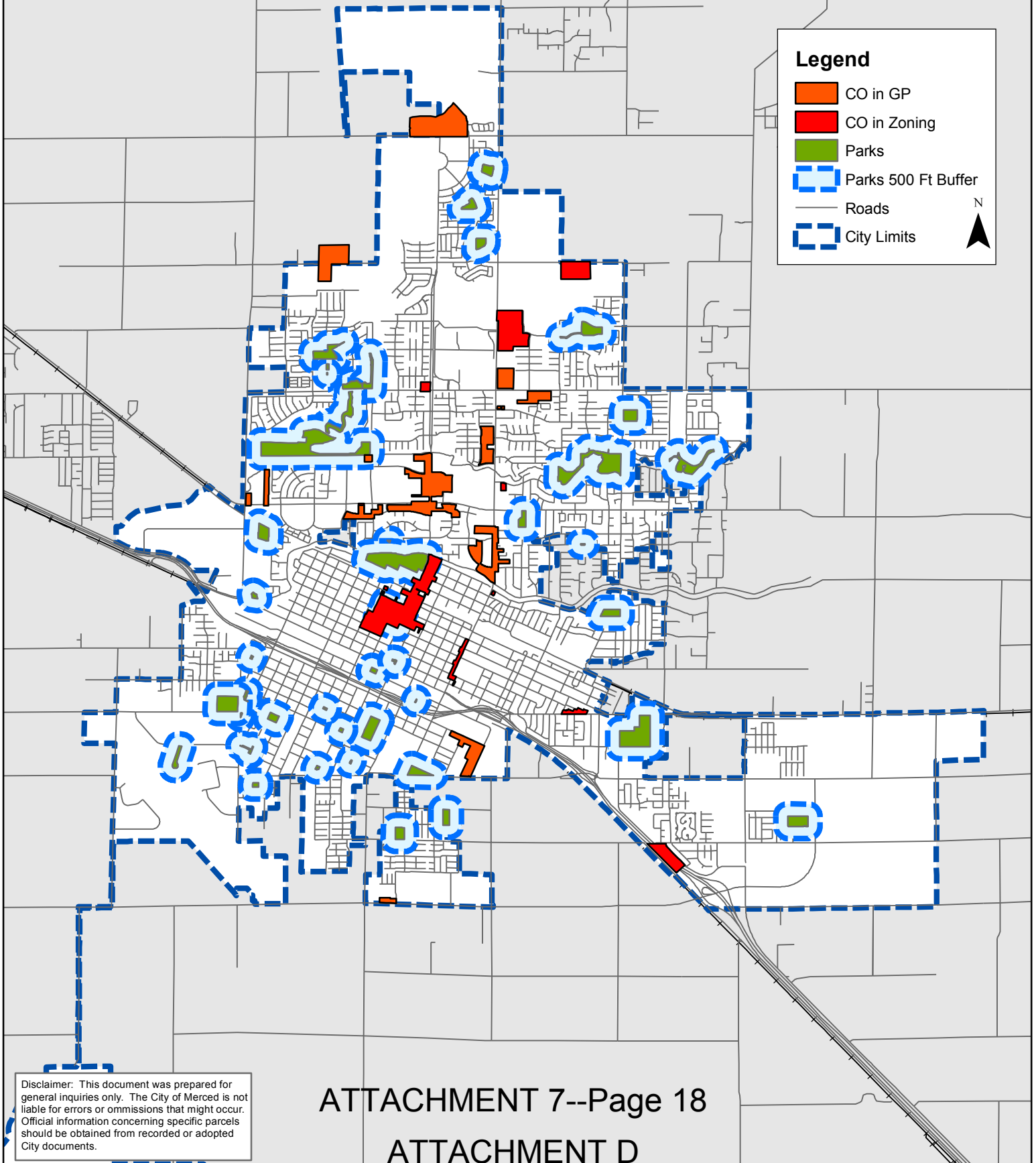


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ATTACHMENT 7--Page 17

ATTACHMENT C

# Parks-500 Ft Buffers



# Libraries/Youth & Rec Centers - 500 Foot Buffers

## Legend

- Youth Center
- Youth Center 500 Buffer
- Public Libraries
- Libraries\_500\_Buffer2
- CO in GP
- CO in Zoning
- roads
- City Limit



Disclaimer: This document was prepared for general inquiries only. The city of Merced is not liable for error or omissions that might occur. Official information concerning specific parcels

# Chapter 20.20 - C-O DISTRICT

Sections:

## **20.20.010 - Purpose.**

The purpose of the C-O district is to provide a district for medical, business and professional offices, and medical and dental clinics.

*(Ord. 824 § 7.101, 1964).*

## **20.20.020 - Permitted uses.**

The following are the principal permitted uses:

- A. Medical and dental offices and clinics;
- B. Administrative, executive and editorial offices;
- C. Professional offices for lawyers, engineers, architects;
- D. Financial offices, including banks and real estate and other general business offices;
- E. Medical and dental laboratories, not including the manufacture of pharmaceutical or other products for general sale or distribution;
- F. Commercial parking lots for passenger vehicles;
- G. Schools and studios for arts and crafts, photography, music and dance;
- H. Therapeutic/rehabilitation offices;
- I. Any other office or professional use which is determined by the commission to be of the same general character as the above permitted uses;
- J. Massage therapy provided by a sole practitioner who has a valid certificate from the state of California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 et seq.).

*(Ord. 2039 § 1, 2000: Ord. 1853 § 10, 1993: Ord. 824 § 7.102, 1964).*

*(Ord. No. 2452, § 1, 1-4-2016)*

## **20.20.030 - Accessory uses.**

The following are accessory uses:

- A. Nameplates and other directory signs appurtenant to any permitted use; provided, there is no more than four (4) square feet in area for each building, but in no instance shall the aggregate area of all signs for any one building exceed four (4) square feet plus one square foot per tenant. The signs shall only be illuminated with indirect lighting. The signs shall contain no reading matter, except the names, professions, locations or any identification required by state or federal agencies of the occupants of any building on the site. For purposes of this chapter, these requirements shall pertain to all signs visible from exterior property lines;
- B. Incidental services, such as restaurants, pharmacies and retail sales to serve occupants and patrons of the principal permitted use, when conducted and entered from within the building group; provided, there is no exterior display or advertising;

- C. Accessory buildings and uses customarily appurtenant to a permitted use, such as an incidental storage facility, garage or off-street parking area.

*(Ord. 824 § 7.103, 1964).*

#### **20.20.040 - Conditional uses.**

The following are conditional uses:

- A. Public and quasi-public uses appropriate to the district, such as hospitals, convalescent or nursing homes and professional, business and technical schools;
- B. Mortuaries and crematories;
- C. R-4 district residential uses subject to all restriction and requirements of that district;
- D. Public utility uses, substation, and communication equipment buildings;
- E. Signs for single occupant in excess of the allowable area, but not to exceed fifty (50) square feet per lot;
- F. Prescription pharmacies, without variety goods;
- G. Bail bond businesses;
- H. Day care facilities for more than twelve (12) children;
- I. Day care facilities for the elderly of twelve (12) or fewer persons.
- J. Beauty salons, barber shops, tanning salons, and nail salons.
- K. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.

*(Ord. 2039 § 2, 2000: Ord. 1853 § 11, 1993: Ord. 1767 § 4, 1990: Ord. 1578 § 1, 1985: Ord. 1430 § 1, 1982: Ord. 1201 § 1, 1977: Ord. 824 § 7.104, 1964).*

*(Ord. No. 2452, § 2, 1-4-2016)*

#### **20.20.050 - Height regulations.**

No principal building shall exceed forty feet in height, and no accessory building shall exceed twenty-five feet in height, except:

- A. As provided in Section 20.62.020; or
- B. Exceptions to these height limitations, as may be permitted by the planning commission under a conditional use permit.

*(Ord. 1215 § 1, 1978: Ord. 824 § 7.105, 1964).*

#### **20.20.060 - Area and yard requirements.**

The following minimum requirements shall be observed except where increased for conditional uses:

- A. Lot area (in square feet: seven thousand five hundred;
- B. Yards (in feet):

1. Exterior: ten;
2. Interior: five.

*(Ord. 824 § 7.106, 1964).*

**20.20.070 - Additional conditions.**

The following are other required conditions:

- A. Off-street parking as required in Chapter 20.58;
- B. Site plan approval of all conditional uses as required in Chapter 20.68.
- C. For any proposed conditional use under Section 20.20.040, Subsection J., no more than 20% of the gross floor area nor more than 200 square feet, whichever is less, may be used for retail use.



ADMINISTRATIVE REPORT

File #: 16-161

Meeting Date: 4/20/2016

**Report Prepared by:** *Kenneth Rozell, Senior Deputy City Attorney*

**SUBJECT:** Medical Marijuana Study Session

**REPORT IN BRIEF**

Provides a brief overview of medical marijuana issues at the state and local level, answers questions raised by the City Council relating to medical marijuana, and outlines potential amendments for the City Council to consider regarding existing bans on medical marijuana dispensaries, deliveries and cultivation.

**RECOMMENDATION**

Staff recommends that the City Council take public testimony regarding the medical marijuana issue as it relates to dispensaries, deliveries and cultivation within the City of Merced and either:

- A. Provide direction to staff regarding specific modifications to the City's existing bans on dispensaries, deliveries and/or cultivation of medical marijuana within the City; or,
- B. Schedule another study session on this matter regarding medical marijuana in general or specifically relating to dispensaries, deliveries and/or cultivation; or,
- C. Take no further action regarding medical marijuana at this time.

**AUTHORITY**

City of Merced Charter, Section 200.

**CITY COUNCIL PRIORITIES**

Not Applicable.

**DISCUSSION**

Background

On October 9, 2015, Governor Jerry Brown signed into law three bills (AB 266, AB 243, and SB 643) that together are entitled the Medical Marijuana Regulation & Safety Act (MMRSA). The three bills established a comprehensive regulatory structure around the state's multi-billion dollar medical marijuana industry.

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The legislation creates a dual licensing structure that requires a state and local license or permit in order to cultivate, dispense, or transport medical marijuana. Cities that wish to ban these land use activities are allowed to do so. However, if there is no local licensing requirement, the State Department of Food and Agriculture becomes the sole licensing authority. AB 243 originally included a provision stating that cities that did not regulate or prohibit cultivation before March 1, 2016 would lose the authority to regulate or ban cultivation within their city limits (former Business and Professions Code Section 11362.777, subd. (c)(4)).

In response to this original language in AB 243, the League of California Cities recommended cities immediately adopt an ordinance to ban or regulate the cultivation of medical marijuana to avoid losing local control of land use regulations. Because of the considerable lead time required for these ordinances to go into effect before March 1, 2016, cities had very limited time in which to consider this issue prior to the March 1, 2016 deadline.

Merced has historically banned all medical marijuana uses within the City (including medical marijuana dispensaries) based upon the language of Merced Municipal Code Section 20.06.050(E) that provides:

“No use that is prohibited, unlawful, violates or is inconsistent with federal or state law, or any provision in this code, shall be allowed or permitted in any district under this title.”

Based upon the City’s existing policies, City staff presented an ordinance for consideration by the Planning Commission that would have prohibited all commercial medical marijuana uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced; and prohibited the cultivation of any amount of marijuana for medical use by a qualified patient in all zones and specific plan areas in the City of Merced.

The Planning Commission considered the proposed ordinance at a public hearing held on December 9, 2015. After extensive deliberations, the Planning Commission recommended by a 6-0-1 vote (6 ayes, 0 noes, 1 absent) that the City Council adopt the ordinance after the following changes had been made to it:

- a) Allow medical marijuana dispensaries in some commercial zones (those zones to be determined by staff); and,
- b) Allow delivery of medical marijuana if it begins within one of those allowed commercial zones; and,
- c) Consistent with the regulations of the County, allow the growth of up to 12 medical marijuana plants for personal use per lot.

City staff prepared a new ordinance consistent with the direction of the Planning Commission.

At its meeting on January 4, 2016, the City Council first held a study session on medical marijuana issues and then subsequently held a public hearing regarding medical marijuana. After taking public



testimony and extensive deliberations, the City Council voted 7 to 0 to introduce Ordinance No. 2454, which prohibits all commercial medical marijuana uses in the City and prohibits cultivation of marijuana for medical use by a qualified patient or primary caregiver. However, as part of the motion introducing Ordinance No. 2454, the City Council directed staff to schedule multiple study sessions after the effective date of the ordinance to consider the City's options relating to medical marijuana within the City (including dispensaries, delivery and cultivation). On January 19, 2016, the City Council adopted Ordinance No. 2454, which become effective 30 days later on February 18, 2016.

On March 1, 2016, the City held a special meeting to discuss medical marijuana. At that meeting, the City Council took public testimony and considered issues relating to medical marijuana dispensaries, delivery of medical marijuana from licensed dispensaries and if medical marijuana would be allowed to be cultivated within the City by primary caregivers or qualified patients.

At that meeting, the City Council asked that staff provide answers to specific questions at the next meeting regarding medical marijuana, as well as to provide a copy of the 2008 California Attorney General Guidelines relating to medical marijuana. Finally, the City Council asked that staff prepare a draft medical marijuana ordinance for consideration by the City Council.

#### Discussion

##### 1. Draft Ordinance Regarding Medical Marijuana Dispensaries, Deliveries and Cultivation

Pursuant to the City Council's direction at the March 1, 2016 special meeting, staff has prepared a draft medical marijuana ordinance that addresses three specific areas - medical marijuana dispensaries, delivery and cultivation. (See Attachment 1.) Before, however, the ordinance can be finalized and scheduled for a public hearing before the Planning Commission, the City Council will first need to provide specific direction on the following questions:

##### A. Dispensaries

1. Does the City Council wish to allow medical marijuana dispensaries within the City of Merced?
2. If so, in which zone(s) would dispensaries be allowed? (Maps depicting the commercial zones within the City are included as Attachment 2.)
3. If dispensaries are allowed, does the City Council wish to place a limit on the number of dispensaries within the City?

##### B. Delivery

1. Does the City Council wish to allow deliveries of medical marijuana within the City of Merced?

##### C. Cultivation

1. Does the City Council wish to allow the cultivation of medical marijuana within the City by a primary caregiver or qualified patient?

2. If so, will the cultivation be allowed indoors, outdoors or both?
3. If cultivation is allowed, how many plants or square footage of cultivation will be allowed per lot or per dwelling unit? Options include, but are not limited to:
  - i. A specific number of plants per legal lot or parcel.
  - ii. A specific number of plants within a single private residence or upon the grounds of that residence.
  - iii. A specified square footage for indoor and/or outdoor growing of medical marijuana.

2. 2008 Attorney General "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use"

As requested at the March 1, 2016 meeting, the 2008 Attorney General "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" (the "Guidelines") are attached as Attachment 3. The Guidelines generally provide a good overview of existing medical marijuana regulations, although the Guidelines do not include the provisions of MMRSA (the Medical Marijuana Regulation & Safety Act) that went into effect on January 1, 2016.

Several areas of the Guidelines, however, are incorrect based upon court cases that were decided after the 2008 Guidelines were released. In *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 762, the California Supreme Court held that cities had the right to regulate or ban medical marijuana dispensaries. In *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 965, an appellate court held that public entities retained their land use authority as it relates to cultivation of medical marijuana and are not required to allow cultivation within their corporate boundaries.

3. Summary of Regulations of Selected Jurisdictions Relating to Personal and Commercial Growth of Medical Marijuana

At its March 1, 2016 meeting, members of the City Council asked for additional information regarding small and large cities and counties and whether they allow personal and/or commercial growth of medical marijuana. Attachment 4 provides an overview of regulations for a variety of cities and counties in California.

4. Summary of Problems That Other Cities Are Having With Dispensaries

At the March 1, 2016 meeting, members of the City Council asked for a summary of problems that other cities are having with medical marijuana dispensaries.

San Francisco:

- 28 dispensaries currently.

- Current rules restrict pot businesses to only a small portion of the City, known as the “green zone”, which results in clustering.
- Current restrictions on dispensaries include locating only on ground floor of building.
- The Green Cross, a medical cannabis dispensary and delivery service. Most delivery services are unregulated. San Francisco is one of few cities to give official approval for them.
- SF law tasks the city’s Dept. of Public Health with regulating the medical marijuana industry (most cities give function to law enforcement or zoning agencies).
- No cap on licenses.

*San Diego:*

- Unregulated until 2014 ordinance.
- Ordinance allowing 4 dispensaries to open in each of San Diego’s 9 city districts for a total of 36 dispensaries.
- Must be more than 1,000 ft. from any public park, church, school, facility oriented toward children, or any previously permitted dispensary.
- Dispensaries compete for city approval and experience difficulty in locating place to operate.
  - This issue has created a boom in less regulated delivery services (San Diego zoning ordinance does not address delivery at all).
  - More than 100 delivery services in San Diego.
  - MMRSA will now require delivery services to list a physical place of business and local authorities can audit records and inventory.
- Illegal storefronts with no regard for the law continue to operate.
  - City Attorney’s office closed more than 260 storefronts from 2010-2014.

*Los Angeles:*

- Unregulated until 2013 with passage of Prop. D.
- Prop. D banned medical dispensaries except those operating legally prior to 2007 and already registered with the city.
- Per LA City Attorney, 134 dispensaries eligible to operate legally.
- UCLA survey found:

- 3 out of 4 dispensaries in the city are illegal.
- Highest concentrations of dispensaries in neighborhoods with lower-than-average household incomes compared to LA at large.
  - In 2007, there were 2 dispensaries in Wilmington and the neighborhoods of South LA, SE LA, San Pedro, Harbor Gateway. In 2015, nearly 40 operating dispensaries in those communities alone.
  - No dispensaries in Pacific Palisades and Beverly Crest, two of the three wealthiest neighborhoods in LA.
  - As of 2014, six of the 10 highest earning neighborhoods in LA had no dispensaries.
- Police indicate that dispensaries cause harm to community surrounding them:
  - Increased crime robberies.
  - Lack of citywide enforcement leads to more crime

#### *Fresno County:*

- Personal grows banned February 2014
  - Declaring it a public nuisance, which turned it into a local zoning issue
  - Fine is \$1,000 per plant
  - Attorneys for growers fined by the county claim due process violations by issuing fines without giving growers time to pull plants themselves and states the growers could lose their homes or property because of exorbitant fines.
- Dispensaries banned.
- Despite drought conditions, per Sheriff Department data, county saw large increase in marijuana grows and in addition a large increase in violence such as robberies and murders associated with marijuana grows.
- Fresno Sheriff Margaret Mims states many patients believe they can grow up to 99 plants. This number comes from a list of federal drug trafficking penalties which requires federal government to sentence growers it catches cultivating 100 or more plants.

#### 5. General Information regarding THC and CBD

Members of the City Council also requested general information regarding THC and CBD - two constituents normally found in marijuana.

According to Wikipedia, tetrahydrocannabinol (THC) is the principal psychoactive constituent (or

cannabinoid) of cannabis-i.e., a component of marijuana that can result in alterations in perception, mood, or consciousness or the “high” often associated with marijuana. (See <https://en.wikipedia.org/wiki/Tetrahydrocannabinol>.) First isolated in 1964 by Israeli scientists at the Weizmann Institute of Science, it can be an amber or gold colored glassy solid when cold, which becomes viscous and sticky if warmed.

A pharmaceutical formulation of THC (i.e., a synthetic version of THC) is available by prescription in the U.S. under the brand name Marinol and is used to combat nausea and vomiting caused by cancer chemotherapy. This drug is also used to treat loss of appetite and weight loss in patients with HIV infection. (See <http://www.webmd.com/drugs/2/drug-9308/marinol-oral/details>.)

Cannabidiol (CBD) is one of at least 113 active cannabinoids identified in marijuana. (See <https://en.wikipedia.org/wiki/Cannabidiol>.) CBD is considered to have a wide scope of potential medical applications. CBD is the predominant cannabinoid in hemp-cannabis grown for fiber or growing in the wild.

CBD-rich strains were generally not available to cannabis users in California and other areas. (See <https://www.projectcbd.org>.) Generations of breeding marijuana for maximum THC and a strong “high” had reduced the CBD to trace amounts in most cannabis strains in Northern California. To meet the demands of medical cannabis patients, growers are currently developing more CBD-rich strains.

For data collection purposes, “CBD-rich” was initially defined as 4% or more by dry weight. More balanced strains with roughly equal amounts of CBD and THC were discovered, and then a handful of CBD-dominant strains (20:1 CBD:THC ratios or higher) were discovered, fostering a cottage industry of CBD-rich concentrates, oil extracts, and other CBD-rich products.

According to the FDA, examples of drugs in clinical testing using CBD and THC include Sativex for cancer pain and Epidiolex for childhood seizures. (See <http://www.fda.gov/downloads/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm438966.pdf>.)

#### 6. Availability of Labs to Test Medical Marijuana and How These Labs Are Regulated and Certified

Under the Medical Marijuana Regulation & Safety Act (MMRSA), testing of cannabis will be mandated prior to delivery to dispensaries or other businesses (Business and Professions Code Sections 19341 to 19347). MMRSA requires medical cannabis to be lab tested for regulatory purposes on or before July 1, 2017 and sets standards for certification of testing laboratories to perform random sample testing of all medical marijuana.

For example, under the standard outlined in Business and Professions Code Section 19343:

“A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

- a) Is registered by the State Department of Public Health.

- b) Is independent from all other persons and entities involved in the medical cannabis industry.
- c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.
- d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.
- e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.”

There are existing marijuana/cannabis testing labs throughout California, including SC Labs in Santa Cruz, Steep Hill Labs in Oakland, Sequoia Analytical Labs in Sacramento, and Cannalysis Labs in Costa Mesa. Until MMRSA, there were no regulations or certification requirements in California and medical marijuana could be sold without any testing or standardized testing protocols and techniques. However, in the multibillion-dollar medical marijuana market, there has been awareness and recognition that testing can help legitimize the drug, protect patients, promote sales and improve breeding programs.

#### 7. Outline of Public Health Department Process For Obtaining A Medical Marijuana Identification Card

A medical marijuana identification card can be obtained through the County Public Health Department (not through a physician's office or an evaluation center). The medical marijuana identification card is voluntary to patients and all that is required under SB 420 is a physician's letter recommending the use of medical marijuana. (See <https://www.cdph.ca.gov/programs/MMP/Pages/MMPFAQ.aspx>.) Merced County's website provides additional information regarding the process for obtaining a medical marijuana identification card. (See <http://www.co.merced.ca.us/index.aspx?NID=629>.)

Individuals wishing to obtain such a card need to complete the Medical Marijuana Program Application form and submit to County Health Department along with the following:

- A. Government-issued photo ID
  - 1. If under 18/no photo ID, may provide certified copy of birth certificate
  - 2. If a primary caregiver is designated on application, primary caregiver must present photo ID at same time. Primary caregiver can use certified copy of birth certificate only if under 18 and serving as primary caregiver for their own child
- B. Proof of county residency
- C. Proof of legal status
- D. Proof of Physician Recommendation: Written documentation from doctor recommending use of MJ is appropriate for one or more of the following serious medical conditions:
  - 1. AIDS
  - 2. Anorexia

3. Arthritis
4. Cachexia
5. Cancer
6. Chronic pain
7. Glaucoma
8. Migraine
9. Persistent muscle spasms including that associated with multiple sclerosis
10. Seizures, including those associated with epilepsy
11. Severe nausea
12. Any other chronic or persistent medical symptom that either substantially limits the ability of the person to conduct one or more major life activities as defined by the ADA of 1990 or, if not alleviated, such chronic or persistent medical symptoms may cause serious harm to your safety, or your physical or mental health

- E. Administering agency is required to verify applicant's medical documentation with the medical provider.
- F. Pay required application fees (\$112.50/Medi-Cal Beneficiary or \$225.00/Non Medi-Cal), which are nonrefundable.
- G. If incomplete application and/or fail to provide all required information, application will be denied and may be restricted from reapplying for 6 months

8. Actual Number of Medical Marijuana Users in Merced

According to a State database, the total number of medical marijuana identification cards issued in Merced County from fiscal year 06/07 through October 2015 is 231; the total number of medical marijuana identification cards issued statewide through November 2015 is 84,111. There is no data available on actual users in Merced or Merced County given that obtaining a medical marijuana identification card is voluntary. (See

<https://www.cdph.ca.gov/programs/MMP/Pages/MMPFAQ.aspx>.)

9. Percentage of Chemotherapy Patients That Do Not Respond to Regular Anti-Nausea Drugs

One of the members of the City Council asked about the percentage of chemotherapy patients that do not respond to regular anti-nausea drugs. According to the American Cancer Society, about 7 or 8 out of every 10 people treated for cancer have bouts of nausea and vomiting. (See

<http://www.cancer.org/acs/groups/cid/documents/webcontent/003200-pdf.pdf>; Attachment 5.)

According to the American Cancer Society, no one drug can prevent or control chemo-related nausea and vomiting 100% of the time. This is because chemo drugs act on the body in different ways and each person responds to chemotherapy and the anti-nausea/vomiting drugs differently. To choose the best treatment plan, the doctor:

- A. Considers how likely the chemo is to cause nausea and vomiting if no anti-nausea/vomiting treatment is given.
- B. Selects anti-nausea/vomiting medicines based on how much the chemo drugs are known to affect the vomiting center in the brain.
- C. Looks at past nausea and vomiting.

- D. Reviews how well any anti-nausea medicines have worked before.
- E. Looks at the side effects of the anti-nausea/vomiting medicines.
- F. Uses the lowest effective dose of the anti-nausea/vomiting medicine before chemo or radiation therapy is given.
- G. Uses medicines to try to prevent (not just control) the nausea and vomiting
- H. Carefully watches response to the anti-nausea treatment.
- I. Makes drug changes as needed to keep you from having nausea and vomiting.

Anti-nausea/vomiting medicines are administered based upon which chemo therapy is being received for the cancer. A patient may have to try a few different medicines to find the ones that work best for him/her, if at all. There may be other factors besides the chemo adding to the nausea and vomiting. Many of these drugs are very expensive and require pre-approval from health insurance before they will be covered.

#### 10. Conclusion

Staff recommends that the City Council take public testimony regarding the medical marijuana issue as it relates to dispensaries, deliveries and cultivation within the City of Merced and either:

- 1. Provide direction to staff regarding specific modifications to the City's existing bans on dispensaries, deliveries and/or cultivation of medical marijuana within the City; or,
- 2. Schedule another study session on this matter regarding medical marijuana in general or specifically relating to dispensaries, deliveries and/or cultivation; or,
- 3. Take no further action regarding medical marijuana at this time.

#### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed at this time.

#### **ATTACHMENTS**

- 1. Draft Medical Marijuana Ordinance
- 2. Commercial Zoning Maps
- 3. 2008 Attorney General "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use"
- 4. Status of Selected Cities and Counties Regarding Personal and Commercial Medical Marijuana Cultivation
- 5. American Cancer Society Publication on Nausea and Vomiting



<b>County/City</b>	<b>Commercial Grow</b>	<b>Personal Grow</b>	<b>Other Information</b>
Alameda County	No	Yes	Per State Law <sup>1</sup>
Calaveras County	No	Yes	Per State Law
Humboldt County	Yes	Yes Up to 3 lbs. Indoor: limited to 50 sq ft per parcel 1200 watts Outdoors: limited to 100 sq. ft. on parcels 1 acre or less; up to 200 sq. ft. 1 acre to 5 acres	Code § 581-1(d) finds that a 100 sq. ft canopy of mature female cannabis plants typically will yield 3 lbs. of dried processed marijuana per year, outdoor, regardless of number of plants
Placer County	No	Yes	Per State Law
Adelanto	Yes, 25 commercial medical marijuana cultivation permits issued on December 29, 2015.	Yes	Commercial cultivation is conditionally permitted within the Manufacturing/Industrial (MI) zone designation. Not allowed within 2,500 feet of a school, public playground or park, child care or day care facility, youth center, or church.
Berkeley	Yes	Yes	Visible outdoor gardens limited to 10 plants

<sup>1</sup> "[N]o more than six mature or 12 immature marijuana plants per qualified patient." (Health and Safety Code Section 11362.77, subd. (a).) However, per *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 965, public entities retain their land use authority as it relates to cultivation of medical marijuana and are not required to allow cultivation within their corporate boundaries.

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Chico	No	Yes	Outdoors: 50 sq. ft. per parcel, regardless of number of patients. Plants must be enclosed, screened & 5 ft. from property line Indoors: under 50 sq. ft. and 1200 watts & only with permit stating outdoor is not possible and building owner approves
Chowchilla	No	Yes	In an inspected secure enclosed structure with solid walls and roof & not encompassing living space. 120 sq ft per parcel. Only with property owner permission.
Clovis	No	Yes	Per State Law
Coalinga	Yes	Yes	Per State Law
Fowler	No	Yes	Per State Law
Folsom	No	No	
Fresno County	No	No	
Fresno City	No	No	
Lemoore	No	No	
Lodi	No	Yes	No outdoor cultivation Indoor limited to residence or garage of qualified patients or caregivers

Los Angeles		Yes	Allows 3-patient collective grows by patients or designated primary caregivers. No plant limits stated; using the state guidelines. Thus 18 mature plants for a 3-patient garden permitted
Madera County	No	Yes	Per State Law
Madera City	No	No	
Modesto	No	No	
Oakland	Yes	Yes Up to 3 lbs per patient	Indoors: 72 plants in max 32 sq. ft. grow area Outdoors: 20 plants no area limit Collective gardens limited to 3 patients Dispensaries serving 4 or more patients allowed max 6 mature and 12 immature plants and ½ lb. per patient (Oakland MC 5.81.101)
Reedley	No	Yes	Per State Law
Turlock	No	No	
San Francisco	Yes	Yes	Patients allowed up to 24 plants or 25 sq. ft. of canopy; dispensary gardens capped at 99 plants in 100 sq. ft. Possession limit is 8 oz dried cannabis per patient

Sacramento (City)	Yes	Yes	Outdoor cultivation banned but alternative structures acceptable if compliant (secure greenhouse system). 400 sq ft allowance for personal cultivation; 3800 watts artificial light
Sacramento County	No	Yes	9 plants indoors
Stanislaus County	No	No	

**CITY OF MERCED**  
**PLANNING & PERMITTING DIVISION**

**TYPE OF PROPOSAL:** Zoning Ordinance Amendment #16-02

**INITIAL STUDY:** #16-12

**DATE RECEIVED:** April 21, 2016 (date application determined to be complete)

**LOCATION:** City of Merced

**ASSESSOR'S PARCEL NUMBERS:** Not applicable; City-Wide

(SEE ATTACHED PUBLIC HEARING NOTICE AND MAP AT ATTACHMENTS A AND B.)

Please forward any written comments by May 18, 2016 to:

Kim Espinosa, Planning Manager  
City of Merced Planning & Permitting Division  
678 West 18<sup>th</sup> Street  
Merced, CA 95340  
209-385-6858  
[espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

Applicant Contact Information:

City of Merced (see above)

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## **Project Description**

The City of Merced is proposing to adopt an Ordinance to amend Chapter 20.84 “Medical Marijuana and Cultivation” and Section 20.20.040 “Conditional Uses” (Professional/Commercial Office Zone) of the Merced Municipal Code to allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations (Attachment B) by Conditional Use Permit subject to certain restrictions; allow commercial deliveries of medical marijuana in the City; and to allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line.

As proposed, the ordinance would also place restrictions on medical marijuana dispensaries as follows: 1) The proposed dispensary could not be located within 600 feet of the property line of any elementary school, middle school, or high school (consistent with State law); 2) The proposed dispensary could not be located within 500 feet of the property line of any public park that includes playgrounds, active play areas, and/or sports fields (not including bike paths); 3) The proposed dispensary could not be located within 500 feet of the property line of any youth center, City-owned and operated recreational center, or public library. In addition, no more than four dispensaries shall be authorized to operate in the City at any given time and dispensaries must obtain a license from the State of California to operate a dispensary prior to opening for business at a specific location in the C-O zone.

As proposed in regards to deliveries, the ordinance would allow only licensed dispensaries be authorized to make medical marijuana deliveries within the City of Merced and such deliveries shall occur solely between the hours of 8 a.m. and 7 p.m.

As proposed in regards to cultivation, commercial cultivation is prohibited in all zones in the City; however, 12 immature or 6 mature plants may be cultivated indoors or outdoors on any lot in the City if the owner, lessee or tenant of the lot is the primary caregiver or the qualified patient and the cannabis is intended for the qualified patient. However, any plants cultivated outdoors shall not be visible from the public right-of-way and shall not be located within 5 feet of the property line. In addition, no fences (whether temporary or permanent) shall be constructed at a height no greater than 6 feet to screen marijuana plants from the public right-of-way, unless City regulations only authorize a fence of a lesser height.

## **I. INITIAL FINDINGS**

- A. The proposal is a project as defined by CEQA Guidelines Section 15378.
- B. The project is not a ministerial or emergency project as defined under CEQA Guidelines (Sections 15369 and 15369).
- C. The project is therefore discretionary and subject to CEQA (Section 15357).
- D. The project is not Categorically Exempt.
- E. The project is not Statutorily Exempt.
- F. Therefore, an Environmental Checklist has been required and filed.

## **II. CHECKLIST FINDINGS**

- A. An on-site inspection was not applicable.
- B. The checklist was prepared on April 28, 2016.
- C. The *Merced Vision 2030 General Plan* and its associated EIR (SCH# 2008071069) were certified in January 2012. The document comprehensively examined the potential environmental impacts that may occur as a result of build-out of the 28,576-acre Merced SUDP/SOI. For those significant environmental impacts (Loss of Agricultural Soils and Air Quality) for which no mitigation measures were available, the City adopted a Statement of Overriding Considerations (City Council Resolution #2011-63). This document herein incorporates by reference the *Merced Vision 2030 General Plan*, the *General Plan Program EIR* (SCH# 2008071069), and Resolution #2011-63.

As a subsequent development project within the SUDP/SOI, many potential environmental effects of the Project have been previously considered at the program level and addressed within the General Plan and associated EIR. (Copies of the General Plan and its EIR are available for review at the City of Merced Planning and Permitting Division, 678 West 18<sup>th</sup> Street, Merced, CA 95340.) As a second tier environmental document, Initial Study #16-02 plans to incorporate goals, policies, and implementing actions of the *Merced Vision 2030 General Plan*, along with mitigation measures from the General Plan EIR, as mitigation for potential impacts of the Project.

Project-level environmental impacts and mitigation measures (if applicable) have been identified through site-specific review by City staff. This study also utilizes existing technical information contained in prior documents and incorporates this information into this study.

Project-level environmental impacts have been identified through site-specific review by City staff. This study also utilizes existing technical information contained in prior documents and incorporates this information into this study.

### **III. ENVIRONMENTAL IMPACTS:**

Will the proposed project result in significant impacts in any of the listed categories? Significant impacts are those which are substantial, or potentially substantial, changes that may adversely affect the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant. (Section 15372, State CEQA Guidelines. Appendix G of the Guidelines contains examples of possible significant effects.)

A narrative description of all "potentially significant," "negative declaration: potentially significant unless mitigation incorporated," and "less than significant impact" answers are provided within this Initial Study.

#### **A. Aesthetics**

##### **SETTING AND DESCRIPTION**

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>A. <u>Aesthetics.</u></b> Will the project:				
1) Have a substantial adverse effect on a scenic vista?				✓
2) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				✓
3) Substantially degrade the existing visual character or quality of the site and its surrounding?				✓

4) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?				✓
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1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

2) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

3) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

4) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**B. Agriculture Resources****SETTING AND DESCRIPTION**

Merced County is among the largest agriculture producing Counties in California (ranked fifth), with a gross income of more than \$2.4 billion in 2006. The County's leading agriculture commodities include milk, chickens, almonds, cattle and calves, tomatoes, and sweet potatoes.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>B. <u>Agriculture Resources.</u> Will the project:</b>				
1) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and monitoring Program of the California Resources Agency, to non - agriculture?				✓



2) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				✓
3) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				✓
4) Cause development of non-agricultural uses within 1,000 feet of agriculturally zoned property (Right-to-Farm)?				✓

1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

2) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

3) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

4) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## C. **Air Quality**

### **SETTING AND DESCRIPTION**

The San Joaquin Valley Air Pollution Control District (SJVAPCD) reviews development projects to assess the impact to air quality and to establish acceptable mitigation measures. While the action of the SJVAPCD is independent of City reviews and actions, their process allows the City to review proposed mitigation measures that could affect project design and operation. Any proposed changes are subject to approval by the City.

The City of Merced is located in the San Joaquin Valley Air Basin (SJVAB), which occupies the southern half of the Central Valley and is approximately 250 miles in length and, on average, 35 miles in width. The Coast Range, which has an average elevation of 3,000 feet, serves as the western border of the SJVAB. The San Emigdio Mountains, part of the Coast Range, and the Tehachapi Mountains, part of the Sierra Nevada, are both located to the south of the SJVAB. The Sierra Nevada extends in a northwesterly direction and forms the eastern boundary of the SJVAB. The SJVAB is basically flat with a downward gradient to the northwest.

The climate of the SJVAB is strongly influenced by the presence of these mountain ranges. The mountain ranges to the west and south induce winter storms from the Pacific to release precipitation on the western slopes, producing a partial rain shadow over the valley. A rain shadow is defined

as the region on the leeward side of the mountain where precipitation is noticeably less because moisture in the air is removed in the form of clouds and precipitation on the windward side. In addition, the mountain ranges block the free circulation of air to the east, resulting in the entrapment of stable air in the valley for extended periods during the cooler months.

Winter in the SJVAB is characterized as mild and fairly humid, and the summer is hot, dry, and cloudless. During the summer, a Pacific high-pressure cell is centered over the northeastern Pacific Ocean, resulting in stable meteorological conditions and a steady northwesterly wind.

### Existing Ambient Air Quality

The California Air Resources Board (CARB) and the United States Environmental Protection Agency (EPA) currently focus on the following air pollutants as indicators of ambient air quality: Ozone (O<sub>3</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM), and lead. Because these are the most prevalent air pollutants known to be deleterious to human health and extensive health-effects criteria documents are available, they are commonly referred to as “criteria air pollutants.”

The EPA has established primary and secondary National Ambient Air Quality Standard (NAAQS) for the following criteria air pollutants: O<sub>3</sub>, CO, NO<sub>2</sub>, SO<sub>2</sub>, PM<sub>10</sub>, fine particulate matter (PM<sub>2.5</sub>), and lead. The primary standards protect the public health and the secondary standards protect the public welfare. In addition to the NAAQS, CARB has established California Ambient Air Quality Standard (CAAQS) for the following criteria air pollutants: sulfates, hydrogen sulfide, vinyl chloride, and visibility-reducing particulate matter. In most cases, the CAAQS are more stringent than the NAAQS.

Criteria air pollutant concentrations are measured at several monitoring stations in the SJVAB. From 1991 to present, there have been two monitoring stations within the City of Merced: S. Coffee Avenue and 2334 M Street. The table below summarizes the air quality data from these locations for the most recent years available.

**Ambient Air Quality in City of Merced**  
**(Number of Days Exceeding State and Federal Standards)**

Year	Merced - S. Coffee Avenue					Merced- 2334 M Street				
	State Ozone	Federal Ozone	State PM <sub>10</sub> <sup>1</sup>	Federal PM <sub>10</sub> <sup>1</sup>	Federal PM <sub>2.5</sub> <sup>2</sup>	State Ozone	Federal Ozone	State PM <sub>10</sub> <sup>1</sup>	Federal PM <sub>10</sub> <sup>1</sup>	Federal PM <sub>2.5</sub> <sup>2</sup>
2009	0	0	*	*	*	*	*	32.5	0	25.1
2008	14	3	*	*	*	*	*	87.2	0	*
2007	5	0	*	*	*	*	*	36.5	0	3.3
2006	4	0	*	*	*	*	*	47.4	0	0
2005	6	0	*	*	*	*	*	29	0	0
2004	14	0	*	*	*	*	*	12.3	0	0
2003	54	0	*	*	*	*	*	44.4	*	*
2001	26	0	*	*	*	*	*	*	0	*
2000	32	0	*	*	*	*	*	69.6	0	*
1999	42	2	*	*	*	*	*	*	*	*
1998	37	3	*	*	*	*	*	*	*	*

1997	1	0	*	*	*	*	*	*	*	*
1996	44	1	*	*	*	*	*	*	*	*
1995	38	3	*	*	*	*	*	96.3	0	*
<sup>(1)</sup> Measurements of PM <sub>10</sub> are made every sixth day. Data is the estimated number of days that the standard would have been exceeded had measurements been collected every day.										
<sup>(2)</sup> Nation 1997 24-Hour PM <sub>10</sub> Standard										
*There was insufficient (or no) data available to determine the value.										

Source: Air Resources Board Aerometric Data Analysis and Management System (ADAM)

Both CARB and EPA use monitoring data to designate areas according to their attainment status for criteria air pollutants. The purpose of the designations is to identify those areas with air quality problems and thereby initiate planning efforts for improvement. The three basic designation categories are nonattainment, attainment, and unclassified. Unclassified is used in an area that cannot be classified on the basis of available information as meeting or not meeting the standards. In addition, the California designations include a subcategory of the nonattainment designation, called nonattainment-transitional. The nonattainment-transitional is given to nonattainment areas that are progressing and nearing attainment. Below are the Attainment Designations for the City of Merced for each of the criteria pollutants.

#### Merced County Attainment Designation (Federal and State)

Pollutant	Designation/Classification	
	Federal Standards	State Standards
Ozone - One Hour	No Federal Standard (See note below)	Nonattainment/ Severe
Ozone - Eight Hour	Nonattainment	Nonattainment
PM <sub>10</sub> (Particulate Matter 10 micrometers in diameter)	Unclassified/Attainment	Nonattainment
PM <sub>2.5</sub> (Particulate Matter 2.5 micrometers in diameter)	Nonattainment	Nonattainment
Carbon Monoxide	Unclassified/Attainment	Unclassified
Nitrogen Dioxide	Unclassified/Attainment	Attainment
Pollutant	Designation/Classification	
	Federal Standards	State Standards
Sulfur Dioxide	Unclassified/Attainment	Attainment
Lead (Particulate)	Unclassified/Attainment	Attainment
Hydrogen Sulfide	*No Federal Standard*	Unclassified
Sulfates	*No Federal Standard*	Attainment
Visibility Reducing Particles	*No Federal Standard*	Unclassified
Note: The Federal One Hour Ozone national Ambient Air Quality Standard was revoked on June 15, 2005		

Source California Air Resources Board, 2009, U.S. EPA, 2009

The San Joaquin Valley Air Pollution Control District (SJVAPCD) attains and maintains air quality conditions in Merced County through a comprehensive program of planning regulation,

enforcement, technical innovation, and promotion of the understanding of air quality issues. The clean air strategy of the SJVAPCD includes the preparation of plans for the attainment of ambient air quality standards adoption and enforcement of rules and regulations concerning sources of air pollution, and issuance of permits for stationary sources of air pollution. The SJVAPCD also inspects stationary sources of air pollution and responds to citizen complaints, monitors ambient air quality and meteorological conditions, and implements programs and regulations required by the Federal Clean Air Act (FCAA) and the California Clean Air Act (CCAA).

The Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI) is an advisory document that provides lead agencies, consultants, and project applicants with uniform procedures for addressing air quality in environmental documents. The GAMAQI contains the following applicable components:

- Criteria and thresholds for determining whether a project may have a significant adverse air quality impact;
- Specific procedures and modeling protocols for quantifying and analyzing air quality impacts;
- Methods available to mitigate air quality impacts; and,
- Information for use in air quality assessments and EIR's that will be updated more frequently such as air quality data, regulatory setting, climate, topography, etc.

The SJVAPCD has also prepared the Air Quality Guidelines for General Plans (AQGGP) (revised June 2005) to provide local planning agencies with a comprehensive set of goals and policies that will improve air quality if adopted in a general plan to provide a guide to cities and counties for determining which goals and policies are appropriate in their particular community; and to provide justification and rationale for the goals and policies that will convince decision makers and the public that they are appropriate and necessary.

**Air Quality Plans.** The SJVAPCD submitted the 1991 Air Quality Attainment Plan in compliance with the requirements set forth in the CCAA. In addition, the CCAA requires a triennial assessment of the extent of air quality improvements and emission reductions achieved through the use of control measures. As part of this assessment, the attainment plan must be reviewed and, if necessary, revised to correct for deficiencies in progress and to incorporate new data or projections. The CCAA requirement for a first triennial progress report and revisions of the 1991 Air Quality Attainment Plan was first fulfilled with the preparation and adoption of the 1995-1997 Triennial Progress Report and Plan Revision. Triennial reports were also prepared for 1997-2000, and 1999-2001 in compliance with the CCAA.

In an effort to reach attainment for ozone, the SJVAPCD has adopted and submitted several ozone and PM<sub>10</sub> plans in its planning history in an effort to reach attainment. In the most current effort to reach attainment for ozone, the SJVAPCD submitted the 2007 Ozone Plan. This plan contains a comprehensive and exhaustive list of regulatory and incentive-based measures to reduce emissions of ozone and particulate matter precursors throughout the Valley. Additionally, this plan calls for major advancements in pollution control technologies for mobile and stationary sources of air pollution, and a significant increase in state and federal funding for incentive-based measures to create adequate reductions in emissions to bring the entire Valley into attainment with the federal ozone standard. The proposed plan calls for a 75% reduction in ozone-forming oxides of nitrogen (NO<sub>x</sub>) emissions.

In June 2003, the District prepared the 2003 PM<sub>10</sub> Plan. The 2003 PM<sub>10</sub> Plan was amended in 2005. The 2006 PM<sub>10</sub> Plan Update was adopted by the SJVAPCD in February 2006 and contains the existing measures adopted by EPA, CARB, and the SJVAPCD and the additional measures needed to reach attainment of the PM<sub>10</sub> standards.

The SJVAPCD's planning documents also identify voluntary strategies to further reduce air quality impacts in the San Joaquin Valley Air Basin (SJVAB). Included in these strategies are an enhanced California Environmental Quality Act (CEQA) program and the promotion of air quality elements or policies for General Plans in all SJVAB cities and counties. The SJVAPCD reviews and comments on CEQA documents and permit applications sent from SJVAB public agencies. Comments from the SJVAPCD include expert advice on level of significance, applicable rules and regulations, and suggested mitigation measures.

In addition to the above mentioned items, the SJVAPCD has submitted numerous plans with respect to ozone, PM<sub>10</sub>, PM<sub>2.5</sub>, and CO in compliance with the FCAA and CCAA.

### ***Project Characteristics***

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>C. <u>Air Quality.</u></b> Would the project:				
1) Conflict with or obstruct implementation of the applicable air quality plan?				✓
2) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				✓
3) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?				✓
4) Expose sensitive receptors to substantial pollutant concentrations?				✓
5) Create objectionable odors affecting a substantial number of people?				✓

1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

2) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

3) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

4) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

5) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**D. Biological Resources**

**SETTING AND DESCRIPTION**

The City of Merced is located in the Central California Valley eco-region (Omernik 1987). This eco-region is characterized by flat, intensively farmed plains with long, hot dry summers and cool, wet winters (14-20 inches of precipitation per year). The Central California Valley eco-region includes the Sacramento Valley to the north and the San Joaquin Valley to the south and it ranges between the Sierra Nevada Foothills to the east to the Coastal Range foothills to the west. Nearly half of the eco-region is actively farmed, and about three fourths of that farmed land is irrigated.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>D. <u>Biological Resources.</u></b> Would the project:				
1) Have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				✓
2) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				✓
3) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				✓
4) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				✓
5) Conflict with any local policies or ordinance protecting biological resources, such as a tree preservation policy or ordinance?				✓
6) Conflict with the provisions of an adopted Habitat Conservation plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan				✓

1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

2) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

3) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

4) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

5) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

6) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## **E. Cultural Resources**

### **SETTING AND DESCRIPTION**

The City of Merced area lies within the ethnographic territory of the Yokuts people. The Yokuts were members of the Penutian language family which held all of the Central Valley, San Francisco Bay Area, and the Pacific Coast from Marin County to near Point Sur.

Merced County was first explored by Gabriel Moraga in 1806, when he named the Merced River, “El Rio de Nuestra Senra de la Merced.” Moraga’s explorations were designed to locate appropriate sites for an inland chain of missions. Moraga explored the region again in 1808 and 1810.

### **Archaeology**

Archaeological sites are defined as locations containing significant levels of resources that identify human activity. Very little archaeological survey work has been conducted within the City or its surrounding areas. Creeks, drainage, and sloughs exist in the northern expansion area of the City, and Bear Creek and Cottonwood Creek pass through the developed area. Archaeological sites in the Central Valley are commonly located adjacent to waterways and represent potential for significant archaeological resources.

Paleontological sites are those that show evidence of pre-human existence. Quite frequently, they are small outcroppings visible on the earth’s surface. While the surface outcroppings are important indications of paleontological resources, it is the geologic formations that are the most important. There are no known sectors within the project area known to contain sites of paleontological significance.



## Historic Resources

In 1985, in response to community concerns over the loss of some of the City's historic resources, and the perceived threats to many remaining resources, a survey of historic buildings was undertaken in the City. The survey focused on pre-1941 districts, buildings, structures, and objects of historical, architectural, and cultural significance. The survey area included a roughly four square-mile area of the central portion of the City.

The National Register of Historic Places, the California Historical Landmarks List, and the California Inventory of Historic Resources identify several sites within the City of Merced. These sites are listed on the Merced Historical Site Survey and maintained by the Merced Historical Society.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>E. <u>Cultural Resources.</u></b> Would the project:				
1) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?				✓
2) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?				✓
3) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				✓
4) Disturb any human remains, including those interred outside of formal cemeteries?				✓

### 1) No Impact

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

### 2) No Impact

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

### 3) No Impact

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

4) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**F. Geology and Soils**

**SETTING AND DESCRIPTION**

The City of Merced is located approximately 150 miles southeast of San Francisco along the west side of the southern portion of the Great Valley Geomorphic Province, more commonly referred to as the San Joaquin Valley. The valley is a broad lowlands bounded by the Sierra Nevada to the east and Coastal Ranges to the west. The San Joaquin Valley has been filled with a thick sequence of sedimentary deposits of Jurassic to recent age. A review of the geologic map indicates that the area around Merced is primarily underlain by the Pleistocene Modesto and Riverbank Formations with Holocene alluvial deposits in the drainages. Miocene-Pliocene Mehrten and Pliocene Laguna Formation materials are present in outcrops on the east side of the SUDP/SOI. Modesto and Riverbank Formation deposits are characterized by sand and silt alluvium derived from weathering of rocks deposited east of the SUDP/SOI. The Laguna Formation is made up of consolidated gravel sand and silt alluvium and the Mehrten Formation is generally a well consolidated andesitic mudflow breccia conglomerate.

**Faults and Seismicity**

A fault, or a fracture in the crust of the earth along which rocks on one side have moved relative to those on the other side, are an indication of past seismic activity. It is assumed that those that have been active recently are the most likely to be active in the future, although even inactive faults may not be “dead.” “Potentially Active” faults are those that have been active during the past two million years or during the Quaternary Period. “Active” faults are those that have been active within the past 11,000 years. Earthquakes originate as movement or slippage occurring along an active fault. These movements generate shock waves that result in ground shaking.

Based on review of geologic maps and reports for the area, there are no known active or potentially active faults, or Alquist-Priolo Earthquake Fault Zones (formerly referred to as a Special Studies Zone) in the SUDP/SOI. In order to determine the distance of known active faults within 50 miles of the Site, the computer program EZ-FRISK was used in the General Plan update.

**Soils**

Soil properties can influence the development of building sites, including site selection, structural design, construction, performance after construction, and maintenance. Soil properties that affect the load-supporting capacity of an area include depth to groundwater, ponding, flooding, subsidence, shrink-swell potential, and compressibility.

The City of Merced regulates the effects of soils and geological constraints primarily through the enforcement of the California Building Code (CBC), which requires the implementation of engineering solutions for constraints to development posed by slopes, soils, and geology.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>F. <u>Geology and Soils.</u> Would the project:</b>				
1) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
a) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?				✓
b) Strong seismic ground shaking?				✓
c) Seismic-related ground failure, including liquefaction?				✓
d) Landslides?				✓
2) Result in substantial soil erosion or loss of topsoil?				✓
3) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?				✓
4) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				✓
5) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				✓

**1) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**2) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**3) No Impact**

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**4) No Impact**

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**5) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**APPLICABLE GENERAL PLAN GOALS AND POLICIES:**

The City's *Merced Vision 2030 General Plan* contains policies that address seismic safety.

<i>Goal Area S-2: Seismic Safety:</i>	
<b>Goal</b>	
<b>Reasonable Safety for City Residents from the Hazards of Earthquake and Other Geologic Activity</b>	
<b>Policies</b>	
<b>S-2.1</b>	Restrict urban development in all areas with potential ground failure characteristics.

**G. Hazards and Hazardous Materials****SETTING AND DESCRIPTION****Hazardous Materials**

A substance may be considered hazardous due to a number of criteria, including toxicity, ignitability, corrosivity, or reactivity. The term "hazardous material" is defined in law as any material that, because of quantity, concentration, or physical, or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment.

**Wildland and Urban Fire Hazards**

Both urban and wildland fire hazard potential exists in the City of Merced and surrounding areas, creating the potential for injury, loss of life, and property damage. Urban fires primarily involve the uncontrolled burning of residential, commercial, or industrial structures due to human activities. Wildland fires affect grassland, brush or woodlands, and any structures on or near these fires. Such fires can result from either human made or natural causes.

Urban fires comprise the majority of fires in the City of Merced while the potential for wildland fires could increase as large blocks of undeveloped land are annexed into the City. Most of the fires are caused by human activities involving motor vehicles, equipment, arson, and burning of debris.

### **Airport Safety**

The City of Merced is impacted by the presence of two airports-Merced Regional Airport, which is in the southwest corner of the City, and Castle Airport (the former Castle Air Force Base), located approximately eight miles northwest of the subject site.

The continued operation of the Merced Regional Airport involves various hazards to both flight (physical obstructions in the airspace or land use characteristics which affect flight safety) and safety on the ground (damage due to an aircraft accident). Growth is restricted around the Regional Airport in the southwest corner of the City due to the noise and safety hazards associated with the flight path.

Castle Airport also impacts the City. Portions of the northwest part of the City's SUDP/SOI and the incorporated City are within Castle's safety zones. The primary impact is due to noise (Zones C and D), though small areas have density restrictions (Zone B2). The military discontinued operations at Castle in 1995. One important criterion for determining the various zones is the noise factor. Military aircraft are designed solely for performance, whereas civilian aircraft have extensive design features to control noise.

Potential hazards to flight include physical obstructions and other land use characteristics that can affect flight safety, which include: visual hazards such as distracting lights, glare, and sources of smoke; electronic interference with aircraft instruments or radio communications; and uses which may attract flocks of birds. In order to safeguard an airport's long-term usability, preventing encroachment of objects into the surrounding airspace is imperative.

### **Railroad**

Hazardous materials are regularly shipped on the BNSF and SP/UP Railroad lines that pass through the City. While unlikely, an incident involving the derailment of a train could result in the spillage of cargo from the train in transporting. The spillage of hazardous materials could have devastating results. The City has little to no control over the types of materials shipped via the rail lines. There is also a safety concern for pedestrians along the tracks and vehicles utilizing at-grade crossings. The design and operation of at-grade crossings allows the City some control over rail-related hazards. Ensuring proper gate operation at the crossings is the most effective strategy to avoid collision and possible derailments.

### **Public Protection and Disaster Planning**

Hospitals, ambulance companies, and fire districts provide medical emergency services. Considerable thought and planning have gone into efforts to improve responses to day-to-day emergencies and planning for a general disaster response capability.

The City's Emergency Plan and the County Hazardous Waste Management Plan both deal with detailed emergency response procedures under various conditions for hazardous materials spills. The City also works with the State Department of Health Services to establish cleanup plans and to monitor the cleanup of known hazardous waste sites within the City.

### **Project Characteristics**

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual

environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>G. <u>Hazards and Hazardous Materials.</u></b> Would the project:				
1) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				✓
2) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				✓
3) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				✓
4) Be located on a site which is included on a list of hazardous materials site compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				✓
5) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				✓
6) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				✓
7) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				✓

8) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				✓
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**APPLICABLE GENERAL PLAN GOALS AND POLICIES:**

The City of Merced *Vision 2030 General Plan* contains policies that address hazardous materials.

<i>Goal Area S-7: Hazardous Materials</i>	
<b>Goal</b>	
<b>Hazardous Materials Safety for City Residents</b>	
<b>Policies</b>	
<b>S-2.1</b>	Prevent injuries and environmental contamination due to the uncontrolled release of hazardous materials.
<b>Implementing Actions:</b>	
<b>7.1.a</b>	Support Merced County in carrying out and enforcing the Merced County Hazardous Waste Management Plan.
<b>7.1.b</b>	Continue to update and enforce local ordinances regulating the permitted use and storage of hazardous gases, liquids, and solids.
<b>7.1.d</b>	Provide continuing training for hazardous materials enforcement and response personnel.

**APPLICABLE GENERAL PLAN GOALS AND POLICIES:**

The *Merced Vision 2030 General Plan* contains policies that address disaster preparedness.

<i>Goal Area S-1: Disaster Preparedness</i>	
<b>Goal</b>	
<b>General Disaster Preparedness</b>	
<b>Policies</b>	
<b>S-1.1</b>	Develop and maintain emergency preparedness procedures for the City.
<b>Implementing Actions:</b>	
<b>1.1.a</b>	Keep up-to-date through annual review the City's existing Emergency Plan and coordinate with the countywide Emergency Plan.
<b>1.1.b</b>	Prepare route capacity studies and determine evacuation procedures and routes for different types of disasters, including means for notifying residents of a need to evacuate because of a severe hazard as soon as possible.
<b>7.1.d</b>	Provide continuing training for hazardous materials enforcement and response personnel.

1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

2) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

3) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

4) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

5) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

6) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

7) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

8) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## **H. Hydrology and Water Quality**

### **SETTING AND DESCRIPTION**

#### **Water Supplies and Facilities**

The City's water supply system consists of four elevated storage tanks with a combined storage capacity of approximately 1.4 million gallons, 23 wells and 14 pumping stations equipped with variable speed pumps that attempt to maintain 45 to 50 psi (pounds per square inch) nominal water pressure. The City is required to meet State Health pressure requirements, which call for a minimum of 20 psi at every service connection under the annual peak hour condition and maintenance of the annual average day demand plus fire flow, whichever is stricter.



**Storm Drainage/Flooding**

In accordance with the adopted City of Merced Standard Designs of Common Engineering Structures, percolation/detention basins are designed to temporarily collect run-off so that it can be metered at acceptable rates into canals and streams which have limited capacity.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>H. <u>Hydrology and Water Quality.</u></b> Would the project:				
1) Violate any water quality standards or waste discharge requirements?				✓
2) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				✓
3) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?				✓
4) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?				✓
5) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?				✓

6) Otherwise substantially degrade water quality?				✓
7) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				✓
8) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				✓
9) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				✓
10) Inundation by seiche, tsunami, or mudflow?				✓

**1) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**2) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**3) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**4) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**5) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**6) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**7) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**8) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**9) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**10) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**APPLICABLE GENERAL PLAN GOALS AND POLICIES:**

The *Merced Vision 2030 General Plan* contains policies that address Water Quality and Storm Drainage.

<i>Goal Area P-5: Storm Drainage and Flood Control</i>	
<b>Goal</b>	
<b>An Adequate Storm Drainage Collection and Disposal System in Merced</b>	
<b>Policies</b>	
<b>P-5.1</b>	Provide effective storm drainage facilities for future development.
<b>P-5.2</b>	Integrate drainage facilities with bike paths, sidewalks, recreation facilities, agricultural activities, groundwater recharge, and landscaping.
<b>Implementing Actions:</b>	
<b>5.1.a</b>	Continue to implement the City's Storm Water Master Plan and the Storm Water Management Plan and its control measures.
<b>5.1.c</b>	Continue to require all development to comply with the Storm Water Master Plan and any subsequent updates.

**I. Land Use and Planning****SETTING AND DESCRIPTION**

The City of Merced is proposing to adopt an Ordinance to amend Chapter 20.84 "Medical Marijuana and Cultivation" and Section 20.20.040 "Conditional Uses" (Professional/Commercial Office Zone) of the Merced Municipal Code to allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations by Conditional Use Permit subject to certain restrictions; allow commercial deliveries of medical marijuana in the City; and to allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line.

As proposed, the ordinance would also place restrictions on medical marijuana dispensaries as follows: 1) The proposed dispensary could not be located within 600 feet of the property line of any elementary school, middle school, or high school (consistent with State law); 2) The proposed dispensary could not be located within 500 feet of the property line of any public park that includes playgrounds, active play areas, and/or sports fields (not including bike paths); 3) The proposed dispensary could not be located within 500 feet of the property line of any youth center, City-owned and operated recreational center, or public library. In addition, no more than four

dispensaries shall be authorized to operate in the City at any given time and dispensaries must obtain a license from the State of California to operate a dispensary prior to opening for business at a specific location in the C-O zone.

As proposed in regards to deliveries, the ordinance would allow only licensed dispensaries be authorized to make medical marijuana deliveries within the City of Merced and such deliveries shall occur solely between the hours of 8 a.m. and 7 p.m.

As proposed in regards to cultivation, commercial cultivation is prohibited in all zones in the City; however, 12 immature or 6 mature plants may be cultivated indoors or outdoors on any lot in the City if the owner, lessee or tenant of the lot is the primary caregiver or the qualified patient and the cannabis is intended for the qualified patient. However, any plants cultivated outdoors shall not be visible from the public right-of-way and shall not be located within 5 feet of the property line. In addition, no fences (whether temporary or permanent) shall be constructed at a height no greater than 6 feet to screen marijuana plants from the public right-of-way, unless City regulations only authorize a fence of a lesser height.

Since this project involves an amendment to the Merced Zoning Code, it would apply within the City Limits of Merced. However, there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>I. <u>Land Use and Planning.</u></b> Would the project:				
1) Physically divide an established community?				✓
2) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				✓
3) Conflict with any applicable habitat conservation plan or natural community conservation plan?				✓

1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**2) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**3) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**J. Mineral Resources****SETTING AND DESCRIPTION**

The City of Merced does not contain any mineral resources that require managed production, according to the State Mining and Geology Board. Based on observed site conditions and review of geological maps for the area, economic deposits of precious or base metals are not expected to underlie the Merced SUDP/SOI. According to the California Geological Survey, Aggregate Availability in California - Map Sheet 52, Updated 2006, minor aggregate production occurs west and north of the City of Merced, but economic deposits of aggregate minerals are not mined within the immediate vicinity of the SUDP/SOI. Commercial deposits of oil and gas are not known to occur within the SUDP/SOI or vicinity.

According to the Merced County General Plan Background Report (June 21, 2007), very few traditional hard rock mines exist in the County. The County's mineral resources are almost all sand and gravel mining operations. Approximately 38 square miles of Merced County, in 10 aggregate resource areas (ARA), have been classified by the California Division of Mines and Geology for aggregate. The 10 identified resource areas contain an estimated 1.18 billion tons of concrete resources with approximately 574 million tons in Western Merced County and approximately 605 million tons in Eastern Merced County. Based on available production data and population projections, the Division of Mines and Geology estimated that 144 million tons of aggregate would be needed to satisfy the projected demand for construction aggregate in the County through the year 2049. The available supply of aggregate in Merced County substantially exceeds the current and projected demand.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>J. <u>Mineral Resources.</u></b> Would the project:				
1) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				✓

2) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?				✓
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1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

2) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## **K. Noise**

### **SETTING AND DESCRIPTION**

Potential noise impacts of the proposed project can be categorized as those resulting from construction and those from operational activities. Construction noise would have a short-term effect; operational noise would continue throughout the lifetime of the project.

Some land uses are considered more sensitive to noise levels than other uses. Sensitive land uses can include residences, schools, nursing homes, hospitals, and some public facilities, such as libraries. The noise level experienced at the receptor depends on the distance between the source and the receptor, the presence or absence of noise barriers and other shielding devices, and the amount of noise attenuation (lessening) provided by the intervening terrain. For line sources such as motor or vehicular traffic, noise decreases by about 3.0 to 4.5A –weighted decibels (dBA) for every doubling of the distance from the roadway.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>K. <u>Noise.</u> Would the project result in:</b>				
1) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				✓

2) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				✓
3) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				✓
4) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?				✓
5) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				✓
6) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				✓

**1) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**2) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**3) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**4) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**5) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**6) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## **L. Population and Housing**

### **SETTING AND DESCRIPTION**

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

### ***Expected Population and Employment Growth***

According to the State Department of Finance, the City of Merced's population in 2014 was estimated to be 81,130. Population projections estimate that the Merced SUDP/SOI area will have a population of 159,900 by the Year 2030. According to the *Merced Vision 2030 General Plan*, the City of Merced is expected to experience significant employment growth by the Year 2030.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>L. <u>Population and Housing.</u></b> Would the project:				
1) Induce substantial population growth in an area either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				✓
2) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				✓
3) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				✓

#### **1) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

#### **2) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

#### **3) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.



## **M. Public Services**

### **SETTING AND DESCRIPTION**

#### **Fire Protection**

The City of Merced Fire Department provides fire protection, rescue, and emergency medical services from five fire stations throughout the urban area. The City's Central Fire Station is located in the downtown area at 16<sup>th</sup> and G Streets. The City also has four other stations throughout the City.

#### **Police Protection**

The City of Merced Police Department provides police protection for the entire City. The Police Department employs a mixture of sworn officers, non-sworn officer positions (clerical, etc.), and unpaid volunteers (VIP's). The service standard used for planning future police facilities is approximately 1.37 sworn officers per 1,000 population, per the Public Facilities Financing Plan.

#### **Schools**

The public school system in Merced is served by three districts: 1) Merced City School District (elementary and middle schools); 2) Merced Union High School District (MUHSD); and, 3) Weaver Union School District (serving a small area in the southeastern part of the City with elementary schools). The districts include various elementary schools, middle (junior high) schools, and high schools.

#### **Parks**

The City of Merced has a well-developed network of parks and recreation facilities.

#### **Project Characteristics**

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

However, it should be noted that the proposed ordinance would place the following requirements on medical marijuana dispensaries that would be allowed by Conditional Use Permit within the Professional/Commercial Office (C-O) zones or in Planned Developments with Commercial Office General Plan designations(Attachment B): 1) The proposed dispensary could not be located within 600 feet of the property line of any elementary school, middle school, or high school (consistent with State law); 2) The proposed dispensary could not be located within 500 feet of the property line of any public park that includes playgrounds, active play areas, and/or sports fields (not including bike paths); 3) The proposed dispensary could not be located within 500 feet of the property line of any youth center, City-owned and operated recreational center, or public library. In addition, no more than four dispensaries shall be authorized to operate in the City at any given time and dispensaries must obtain a license from the State of California to operate a dispensary prior to opening for business at a specific location in the C-O zone.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>M. <u>Public Services.</u></b> Would the project:				
1) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:				
a) Fire Protection?				✓
b) Police Protection?				✓
c) Schools?				✓
d) Parks?				✓
e) Other Public Facilities?				✓

1) **No Impact****a) Fire Protection**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**b) Police Protection**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**c) Schools**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**d) Parks**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**e) Other Public Facilities**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## N. Recreation

### SETTING AND DESCRIPTION

The City of Merced has a well-developed network of parks and recreation facilities.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
N. <b><u>Recreation.</u></b> Would the project:				
1) Increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				✓
2) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				✓

#### 1) No Impact

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

#### 2) No Impact

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## O. Transportation/Traffic

### SETTING AND DESCRIPTION

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>O. <u>Transportation/Traffic.</u></b> Would the project:				
1) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e. result in a substantial increase in either vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?				✓
2) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roadways?				✓
3) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				✓
4) Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?				✓
5) Result in inadequate emergency access?				✓
6) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g. bus turnouts, bicycle racks)?				✓

1) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

2) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

3) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

4) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

5) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

6) **No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

## **P. Utilities and Service Systems**

### **SETTING AND DESCRIPTION**

#### **Water**

The City's water system is composed of 23 groundwater production wells located throughout the City, approximately 350 miles of main lines, and 4 water tower tanks for storage. Well pump operators ensure reliability and adequate system pressure at all times to satisfy customer demand. Diesel powered generators help maintain uninterrupted operations during power outage. The City of Merced water system delivered more than 24 million gallons of drinking water per day in 2013 to approximately 20,733 residential, commercial, and industrial customer locations. The City is required to meet State Health pressure requirements, which call for a minimum of 20 psi at every service connection under the annual peak hour condition and maintenance of the annual average day demand plus fire flow, whichever is stricter. The City of Merced Water Division is operated by the Public Works Department.

The City of Merced's wells have an average depth of 414 feet and range in depth from 161 feet to 800 feet. The depth of these wells would suggest that the City of Merced is primarily drawing water from a deep aquifer associated with the Mehrten geologic formation. Increasing urban demand and associated population growth, along with an increased shift by agricultural users from surface water to groundwater and prolonged drought have resulted in declining groundwater levels due to overdraft. This condition was recognized by the City of Merced and the Merced Irrigation District (MID) in 1993, at which time the two entities began a two-year planning process to assure a safe and reliable water supply for Eastern Merced County through the year 2030. Integrated Regional Water Planning continues today through various efforts.

#### **Wastewater**

Wastewater (sanitary sewer) collection and treatment in the Merced urban area is provided by the City of Merced. The wastewater collection system handles wastewater generated by residential, commercial, and industrial uses in the City.

The City Wastewater Treatment Plant (WWTP), located in the southwest part of the City about two miles south of the airport, has been periodically expanded and upgraded to meet the needs of the City's growing population and new industry. The City's wastewater treatment facility has a capacity of 11.5 million gallons per day (mgd), with an average 2006 flow of 8.5 mgd. The City

has recently completed an expansion project to increase capacity to 12 mgd and upgrade to tertiary treatment with the addition of filtration and ultraviolet disinfection. Future improvements would add another 8 mgd in capacity (in increments of 4 mgd), for a total of 20 mgd. This design capacity can support a population of approximately 174,000. The collection system will also need to be expanded as development occurs.

Treated effluent is disposed of in several ways depending on the time of year. Most of the treated effluent (75% average) is discharged to Hartley Slough throughout the year. The remaining treated effluent is delivered to a land application area and the on-site City-owned wetland area south of the treatment plant.

### **Storm Drainage**

The Draft *City of Merced Storm Drainage Master Plan* addresses the collection and disposal of surface water runoff in the City's SUDP. The study addresses both the collection and disposal of storm water. Systems of storm drain pipes and catch basins are laid out, sized, and costed in the plan to serve present and projected urban land uses.

It is the responsibility of the developer to ensure that utilities, including storm water and drainage facilities, are installed in compliance with City regulations and other applicable regulations. Necessary arrangements with the utility companies or other agencies will be made for such installation, according to the specifications of the governing agency and the City (Ord. 1342 § 2 (part), 1980: prior code § 25.21(f)). The City requires the construction of storm water percolation/detention basins with new development. Percolation basins are designed to collect storm water and filter it before it is absorbed into the soil and reaches groundwater tables. Detention basins are designed to temporarily collect runoff so it can be metered at acceptable rates into canals and streams which have limited capacity. The disposal system is mainly composed of MID facilities, including water distribution canals and laterals, drains, and natural channels that traverse the area.

The City of Merced has been involved in developing a Storm Water Management Plan (SWMP) to fulfill requirements of storm water discharges from Small Municipal Separate Storm Sewer System (MS4) operators in accordance with Section 402(p) of the Federal Clean Water Act (CWA). The SWMP was developed to also comply with General Permit Number CAS000004, Water Quality Order No. 2003-0005-DWQ.

### **Solid Waste**

The City of Merced is served by the Highway 99 Landfill and the Highway 99 Compost Facility, located at 6040 North Highway 99, one and one-half miles north of Old Lake Road. The County of Merced is the contracting agency for landfill operations and maintenance, while the facilities are owned by the Merced County Association of Governments. The City of Merced provides services for all refuse pick-up within the City limits and franchise hauling companies collect in the unincorporated areas. In addition to these two landfill sites, there is one private disposal facility, the Flintkote County Disposal Site, at SR 99 and the Merced River. This site is restricted to concrete and earth material.

### **Project Characteristics**

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual

environmental evaluations will be conducted for the specific site on which the proposed development will take place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>P. <u>Utilities and Service Systems.</u></b> Would the project:				
1) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				✓
2) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				✓
3) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				✓
4) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				✓
5) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				✓
6) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				✓
7) Comply with federal, state, and local statutes and regulations related to solid waste?				✓

**1) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**2) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**3) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**4) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**5) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**6) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**7) No Impact**

There are no site specific impacts involved with this project, which is an amendment to the Merced Zoning Ordinance, and therefore, will not have any direct environmental impacts.

**Q. Mandatory Findings of Significance**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>Q. <u>Mandatory Findings of Significance.</u></b> Would the project:				
1) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				✓



2) Have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects?)			✓	
3) Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			✓	

### 1) **No Impact**

As previously discussed in this document, the project does not have the potential to adversely affect biological resources or cultural resources because no new construction will be involved in the project.

This project involves an amendment to the Merced Zoning Code; there is no specific development proposed at this time. When specific projects are developed under the Zoning Code, individual environmental evaluations will be conducted for the specific site on which the proposed development will take place.

### 2) **Less Than Significant Impact**

The Program Environmental Impact Report conducted for the *Merced Vision 2030 General Plan, the General Plan Program EIR* (SCH# 2008071069) has recognized that future development and build-out of the SUDP/SOI will result in cumulative and unavoidable impacts in the areas of Air Quality and Loss of Agricultural Soils. In conjunction with this conclusion, the City has adopted a Statement of Overriding Considerations for these impacts (Resolution #2011-63) which is herein incorporated by reference.

The certified General Plan EIR addressed and analyzed cumulative impacts resulting from changing agricultural use to urban uses. No new or unaddressed cumulative impacts will result from the Project that have not previously been considered by the certified General Plan EIR or by the Statement of Overriding Considerations, or mitigated by this Expanded Initial Study. This Initial Study does not disclose any new and/or feasible mitigation measures which would lessen the unavoidable and significant cumulative impacts.

The analysis of impacts associated with the project will contribute to the cumulative impacts identified in the General Plan EIR. The nature and extent of these impacts, however, falls within the parameters of impacts previously analyzed in the General Plan EIR. No individual or cumulative impacts will be created by the Project that have not previously been considered at the program level by the General Plan EIR or mitigated by this Initial Study.

### 3) **Less Than Significant Impact**

Development anticipated by the *Merced Vision 2030 General Plan* will have significant adverse effects on human beings. These include the incremental degradation of air quality in the San Joaquin Basin, the loss of prime agricultural soils, the incremental increase in traffic, and the increased demand on natural resources, public services, and facilities. However, consistent with the provisions of CEQA previously identified, the analysis of the Project is limited to those impacts which are peculiar to the Project site or which were not previously identified as significant effects in the prior EIR. The previously-certified General Plan EIR and the Statement of Overriding Considerations addressed those cumulative impacts; hence, there is no requirement to address them again as part of this Project.

This previous EIR has concluded that these significant adverse impacts are accounted for in the mitigation measures incorporated into the General Plan EIR. In addition, a Statement of Overriding Considerations has been adopted by City Council Resolution #2011-63 that indicates that the significant impacts associated with development of the Project are offset by the benefits that will be realized in providing necessary jobs for residents of the City. The analysis and mitigation of impacts has been detailed in the Environmental Impact Report prepared for the *Merced Vision 2030 General Plan*, which are incorporated into this document by reference.

While this issue was addressed and resolved with the General Plan EIR in an abundance of caution, in order to fulfill CEQA's mandate to fully disclose potential environmental consequences of projects, this analysis is considered herein. However, as a full disclosure document, this issue is repeated in abbreviated form for purposes of disclosure, even though it was resolved as a part of the General Plan.

Potential impacts associated with the Project's development have been described in this Initial Study. All impacts were determined to be no impact or less than significant.

## **R. Greenhouse Gas Emissions**

### **SETTING AND DESCRIPTION**

The issue of project-generated Greenhouse Gas (GHG) Emissions is a reflection of the larger concern of Global Climate Change. While GHG emissions can be evaluated on a project level, overall, the issue reflects a more regional or global concern. CEQA requires all projects to discuss a project's GHG contributions. However, from the standpoint of CEQA, GHG impacts on global climate change are inherently cumulative. The quantity of GHGs that it takes to ultimately result in climate change is not precisely known; however, it can safely be assumed that existing conditions do not measurably contribute to a noticeable incremental change in the global climate.

### **THRESHOLDS OF SIGNIFICANCE**

The proposed project would result in a significant impact on the environment if it would:

- Generate GHG emissions either directly or indirectly, that may have a significant impact on the environment;

- Conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>R.     <u>Greenhouse Gas Emissions.</u></b> Would the project:				
1) Generate greenhouse gas emission, either directly or indirectly, that may have a significant impact on the environment?			✓	
2) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			✓	

#### 1) **Less Than Significant Impact**

The proposed Zoning Ordinance Amendment would not result in immediate construction of a project, and will therefore, not generate greenhouse gas emissions, either directly or indirectly. Future construction based on the Zoning Ordinance would be subject to further environmental review.

#### 2) **Less Than Significant Impact**

The proposed Zoning Ordinance Amendment would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

**S. Environmental Determination**

On the basis of this initial environmental evaluation:

I find that the project could have a significant effect on the environment, and that  
  X   a NEGATIVE DECLARATION HAS BEEN PREPARED for public review.

April 28, 2016



Kim Espinosa, Planning Manager



David Gonzalves, Director of Development Services  
Environmental Coordinator  
City of Merced

Distributed for Public Review: April 28, 2016

Attachments:

- A) Public Hearing Notice
- B) Map of Commercial Office Zones or General Plan Designations

NOTICE OF PUBLIC HEARING  
FOR ZONING ORDINANCE AMENDMENT #16-02 AND NOTICE OF INTENT TO ADOPT  
A NEGATIVE DECLARATION

A public hearing will be held by the Merced City Planning Commission on Wednesday, May 18, 2016, at 7:00 p.m., or as soon thereafter as may be heard in the City Council Chambers located at 678 W. 18th Street, Merced, CA, concerning Zoning Ordinance Amendment #16-02, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Chapter 20.84, "Medical Marijuana and Cultivation," and Chapter 20.20, "Professional/Commercial Office," to the Merced Municipal Code to allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office designations by Conditional Use Permit subject to certain restrictions; allow commercial deliveries of medical marijuana in the City; and to allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line.

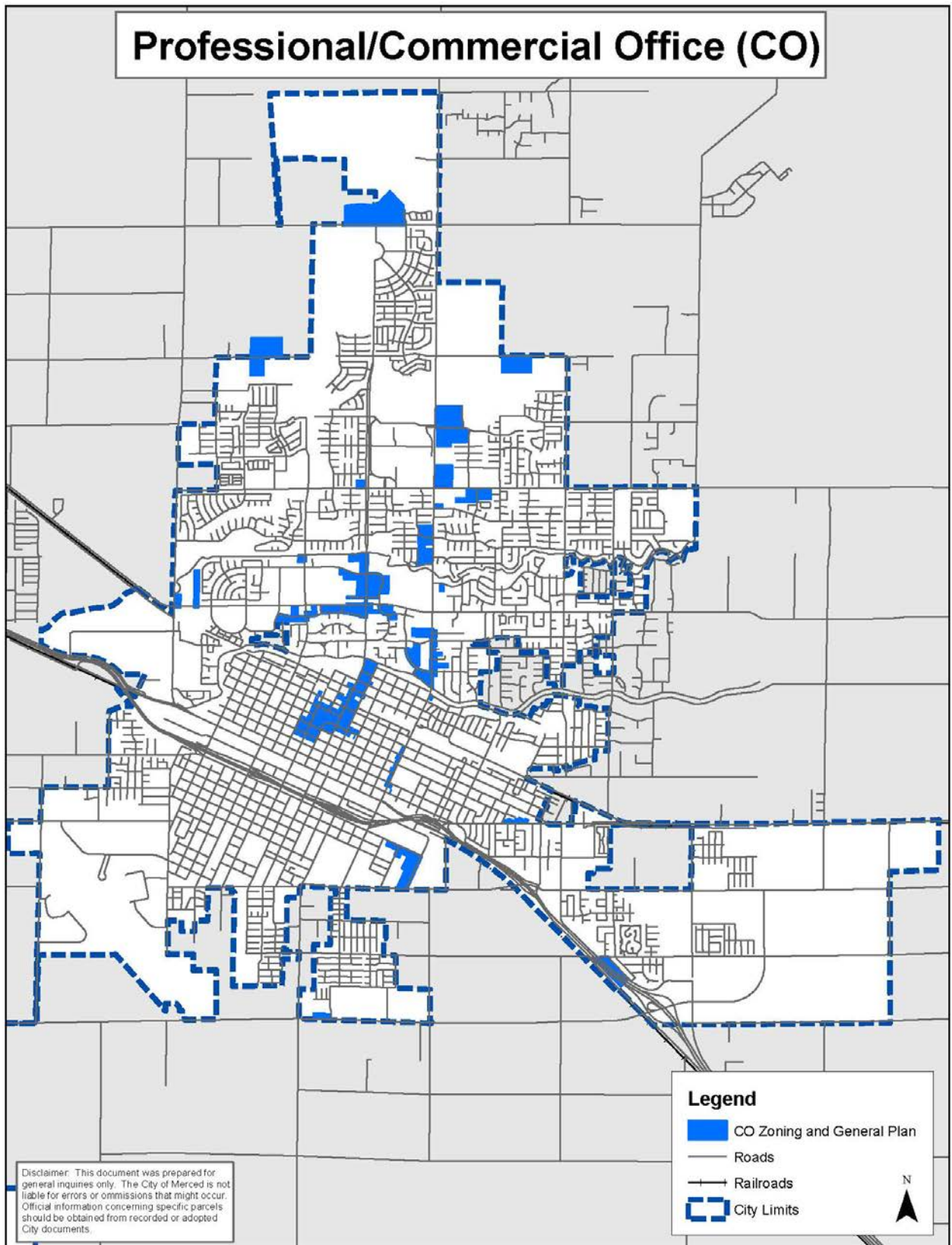
An environmental review checklist has been filed for this project, and a draft negative declaration has been prepared (i.e., no further environmental review would be required) under the California Environmental Quality Act. A copy of this staff evaluation ("Initial Study") is available for public inspection at the City of Merced Planning Department during regular business hours, at 678 West 18th Street, Merced, California. A copy of this document can also be purchased at the Planning Department for the price of reproduction.

All persons in favor of, opposed to, or in any manner interested in this request for a Zoning Ordinance Amendment are invited to attend this public hearing or forward written comments to the Director of Development Services, City of Merced, 678 West 18th Street, Merced, CA 95340. The public review period for the environmental determination begins on April 28, 2016, and ends on May 18, 2016. Please feel free to call the Planning Department at (209) 385-6858 for additional information. If you challenge the decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Merced at, or prior to, the public hearing.

After the Planning Commission makes its decision on this matter, the matter will also be considered at a public hearing before the City Council. A separate notice of that public hearing will also be given.

April 22, 2016

/s/ Kim Espinosa  
Kim Espinosa, Planning Manager



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

**Resolution #\_\_\_\_\_**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of May 18, 2016, held a public hearing and considered **Zoning Ordinance Amendment #16-02**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Chapter 20.84, “Medical Marijuana and Cultivation,” and Chapter 20.20, “Professional/Commercial Office,” to the Merced Municipal Code to allow commercial medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office designations by Conditional Use Permit subject to certain restrictions; allow commercial deliveries of medical marijuana in the City; and to allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through I of Staff Report #16-11; and,

**NOW THEREFORE**, after reviewing the City’s Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #16-12, and approval of Zoning Ordinance Amendment #16-02, as set forth in Attachment A of Staff Report #16-11.

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)

PLANNING COMMISSION RESOLUTION # \_\_\_\_\_

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May 18, 2016

Adopted this 18<sup>th</sup> day of May 2016

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

ATTEST:

\_\_\_\_\_  
Secretary

n:shared:planning:PC Resolutions:ZOA#16-02