

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

**STAFF REPORT:** #17-14 Addendum

**AGENDA ITEM:** 4.3

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

**PLANNING COMMISSION**  
**MEETING DATE:** Nov. 8, 2017

**CITY COUNCIL**  
**MEETING DATE:** Nov. 20, 2017  
(Tentative)

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**SUBJECT:** **Zoning Ordinance Amendment #17-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would replace Merced Municipal Code Section 20.44.170 (“Medical Marijuana and Cultivation”) with a new Section 20.44.170 (“Regulation of Commercial Cannabis Activities – Commercial Cannabis Business Permit Required”); amend Section 20.10.020 and Table 20.10-1 (“Commercial Zoning Districts”); amend Section 20.12.020 and Table 20.12-1 (“Industrial Zoning Districts”); and add Land Use Table 20.44-1 to regulate all commercial cannabis activities and cultivation for personal use in the City of Merced. In general, the regulations would allow Commercial Cannabis Businesses, including cultivation, distribution, manufacturing, deliveries, and dispensaries/retail sales, in certain zones with a Commercial Cannabis Business Permit. \*PUBLIC HEARING\*

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

Recommendation to City Council

- 1) Environmental Review #17-10 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #17-01

**CITY COUNCIL:**

Approve/Disapprove/Modify

- 1) Environmental Review #17-10 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #17-01

**SUMMARY**

Due to an issue with the appointment of one of the Planning Commissioners, this item that was originally heard by the Planning Commission on October 18, 2017, will need to be reconsidered. Changes made since the previous staff report are presented in underlined or strikeout text.

After extensive public discussion over the last few years regarding the regulation of commercial cannabis (or marijuana) in the City of Merced, the City is proposing to adopt an Ordinance that would allow commercial cannabis businesses, including dispensaries/retail sales for both medical and adult/recreational use, personal and commercial cultivation, manufacturing, testing, distribution, and deliveries, in certain zones with a Commercial Cannabis Business Permit. SCI Consulting and City staff have prepared a Draft Ordinance for consideration by the Planning Commission and City Council and is recommending approval.

## **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend approval to the City Council of a Categorical Exemption (Environmental Review #17-10—Attachment K) and Zoning Ordinance Amendment #17-01 (including the adoption of the Resolution at Attachment M) as described in Attachment A.

## **PROJECT DESCRIPTION**

The City of Merced is proposing to adopt an Ordinance (Attachment A) to amend the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) by replacing Section 20.44.170 (“Medical Marijuana and Cultivation”) with a new Section 20.44.170 (“Regulation of Commercial Cannabis Activities – Commercial Cannabis Business Permit Required”); amending Section 20.10.020 and Table 20.10-1 (“Commercial Zoning Districts”); amending Section 20.12.020 and Table 20.12-1 (“Industrial Zoning Districts”); and adding Land Use Table 20.44-1 to regulate all commercial cannabis activities and cultivation for personal use in the City of Merced.

## **BACKGROUND**

### **State of California**

In 1996, California voters adopted Proposition 215, the Compassionate Use Act (“CUA”) as a ballot initiative, codified at Health and Safety Code Section 11362.5. The CUA allows a patient, with a doctor’s recommendation, to use cannabis for medical purposes without the fear of prosecution or arrest. 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 allowed the establishment of medical cannabis dispensaries and allows cities to adopt and enforce local ordinances regarding the location, operation, or establishment of medical marijuana businesses.

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.

In 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. In 2016, this law was subsequently amended and became known as the Medical Cannabis Regulation and Safety Act (“MCRSA”).

In November 2016, the voters of the State of California approved and passed Proposition 64, also known as the “Adult Use of Marijuana Act” (“AUMA”).

In June 2017, the Governor signed into law Senate Bill 94, also known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). MAUCRSA establishes a comprehensive regulatory structure for the State’s medical and adult use cannabis industries. The State is in the process of establishing detailed licensing and other regulations for such businesses in anticipation of issuing State licenses starting on January 1, 2018.

### City of Merced

After several public meetings/hearings and extensive public discussion from January to July 2016, on August 1, 2016, the Merced City Council introduced Ordinance No. 2464 (which passed by a 4-3 vote) and was subsequently adopted on August 15, 2016, and was effective 30 days later on September 15, 2016.

Ordinance No. 2464 has the following provisions:

- 1) Allows medical marijuana dispensaries with a Conditional Use Permit in the C-O (Professional/Commercial Office) District and Planned Developments (P-D) with Commercial Office General Plan designations, but also places restrictions on medical marijuana dispensaries as follows:
  - a) The proposed dispensary cannot be located within 600 feet of the property line of any kindergarten, elementary school, middle school, or high school (consistent with State law);
  - b) The proposed dispensary cannot 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);
  - c) The proposed dispensary cannot be located within 500 feet of the property line of any youth center, City-owned and operated recreational center, or public library;
  - d) No more than four dispensaries shall be authorized to operate in the City at any given time; and,
  - e) Dispensaries must also obtain a license from the State of California to operate a dispensary prior to opening for business at a specific location in the City.
- 2) Allows deliveries of medical marijuana from licensed dispensaries during the hours of 8:00 a.m. and 7:00 p.m.; and,
- 3) Allows the indoor growth of up to six marijuana plants for personal use by qualified patients and caregivers.

The Ordinance also included language stating that the applications for medical marijuana dispensaries would not be accepted until specific regulations regarding the dispensaries had been adopted by the City Council. These include specific regulations regarding the operations of the dispensaries and objective standards for the issuance of the regulatory permit that a proposed operator must obtain prior to applying for a conditional use permit for a dispensary.

Because the City has not yet adopted specific regulations regarding the operations of dispensaries and objective standards for the issuance of regulatory permits for dispensaries, the City is currently not authorized to accept applications for regulatory permits for dispensaries or applications for a conditional use permit for dispensaries.

On February 21, 2017, the City Council approved a contract with SCI Consulting to prepare operating regulations for medical marijuana dispensaries, a dispensary selection process, a full cost recovery plan, and implementation of the dispensary selection process once adopted. Additional services included making sure that such procedures could be applied to recreational cannabis businesses based on Proposition 64 in the future, recommendations regarding testing, distribution, and manufacturing, and development of a regulatory fee for full cost recovery of the ongoing implementation of dispensary regulations.

Several Planning Commission/City Council study sessions, stakeholder meetings, and public workshops were held from April to September 2017 (see Finding B below), resulting in the Draft Ordinance at Attachment A.

## **FINDINGS/CONSIDERATIONS:**

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

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

### **Public Participation Process**

- B) After the approval of the contract with SCI Consulting in February 2017, the public has had several opportunities to be involved in the process of developing the proposed ordinance. On April 17, 2017, SCI had a study session with the City Council to brief the Council and the public on the passage of Proposition 64. On May 9, 2017, stakeholder interviews and a public workshop were held to seek input on the process for developing operating regulations for medical cannabis dispensaries and public comment was received. On July 5, 2017, a Planning Commission/City Council study session was held to receive further direction on how to proceed on the ordinance along with additional public comment. On July 12, 2017, a public workshop was held to brief the public on the direction received on July 5. After several additional changes in State law occurred in late summer 2017, another Planning Commission/City Council study session was held on September 12, 2017. On September 12, the City Council and Planning Commission gave SCI and City staff direction to proceed with a Draft Ordinance that would expand the types of commercial cannabis businesses to be allowed in the City. SCI Consulting and City staff subsequently prepared a Draft Ordinance.
- C) During this process, City staff has maintained a list of interested individuals who have asked to be kept informed of the City's progress on the Draft Ordinance. Email notifications were sent to all those individuals on the mailing list of the above meetings (and tonight's public hearing) as they were scheduled. To date, this mailing list has over 85 75 names on it.

At the October 18, 2017, Planning Commission meeting, six individuals spoke in favor of the proposed ordinance. Some individuals asked the Commission to consider allowing adult use dispensaries in the C-O zone, allowing the operating hours in the C-O zone to be the same as the other zones, allowing outdoor cultivation, and to include a local preference in the Merit-Based Selection Criteria. After the meeting, staff received one letter from a member of the public asking for dispensaries to be allowed in Neighborhood Commercial (C-N) zones as well (Attachment L).

**Planning Commission Meetings (October 11 and 18, 2017)**

- D1) On October 11, 2017, the Planning Commission held a study session on the Draft Ordinance and received a detailed overview of the Ordinance provisions. The Planning Commission had several suggestions for changes or clarifications to the Draft Ordinance. Those suggestions, which have been incorporated into the Draft Ordinance at Attachment A, which has been updated since the October 11 study session, include:
- 1) Clarifying the property owner's right to restrict cultivation for personal use on their property and requiring specific written permission to cultivate cannabis in Section 20.44.170(B);
  - 2) Modifying Section 20.44.170(E)(1) dealing with criminal convictions that would preclude someone obtaining a Commercial Cannabis Business Permit;
  - 3) Adding to Section 20.44.170(E)(3) to set a minimum age of 21 for owners and employees of cannabis businesses;
  - 4) Allowing the minimum number of operating hours in dispensaries to be set by the Business Permit, clarifying the requirements for locked storage, requiring signs in dispensaries to spell out prohibited conduct involving cannabis, and prohibiting the use of vending machines in Section 20.44.170(F);
  - 5) Clarifying whether deadlines were based on calendar days or business days and making sure that if City Hall was closed on a deadline day, that the next business day would be the deadline throughout Section 20.44.170(L); and,
  - 6) Setting criteria for the denial of the Annual Renewal of the Commercial Cannabis Business Permit in Section 20.44.170(L)(4).
- D2) On October 18, 2017, the Planning Commission gave direction on several items which resulted in further changes to the Draft Ordinance at Attachment A. The changes to the Draft Ordinance made since October 18 are presented in ~~striketrough~~ and underlined text in Attachment A. Those changes include:
- 1) Further modifications to Section 20.44.170(E)(1) dealing with criminal convictions that would preclude someone obtaining a Commercial Cannabis Business Permit, which better aligns with Health and Safety Code Section 11590, but also provides clarification regarding other disqualifying convictions. Provisions have been added to allow for City discretion if a conviction is over 10 years old and the individual has no other criminal violations during that time; and,
  - 2) Clarifying the requirement in Section 20.44.170(F)(25) for signs to be posted and flyers given to delivery customers [added to Section 20.44.170(G)] that outlined the prohibited conduct involving cannabis, such as consuming it in public, near a school, while driving, etc. and indicating that the City would develop a standard format and content for the sign/flyer.
  - 3) Requiring a 1,000-foot distance from schools for dispensaries/retail sales. The Planning Commission had given direction for 1,000 feet from schools from all cannabis uses, but City staff is recommending that the 1,000-foot buffer only apply to dispensaries/retail sales since other commercial cannabis businesses, such as

manufacturing and cultivation, will not be open to the public and are unlikely to create a nuisance for the schools, so the 600-foot buffer should be sufficient. City staff also had some concerns that the 1,000-foot buffer would cut down the number of sites available for many uses. A preliminary estimate by City staff showed that by increasing the buffer to 1,000 feet for all uses, the number of available parcels for cannabis businesses would be reduced by up to 10 percent in the industrial zones and from 35 to 50 percent in the commercial zones. Those reductions in available sites would still apply to dispensaries/retail sales, which may still be a concern.

- D3) In order to make sure that the City's Draft Ordinance was consistent with State law in regards to the required distances from sensitive uses, City staff added three definitions to the Draft Ordinance in Section 20.44.170(C) for "school," "day care center," and "youth center" that match the State's definitions. In doing that research, City staff became aware that the State requirement for a 600-foot buffer only applied to those three uses. The City's Draft Ordinance also includes "parks," "libraries," and "recreational centers," which would NOT be a State requirement, but a local one. In reviewing the State definitions, City staff determined that "recreational centers" was not needed since it falls under the "youth center" definition. City staff is still recommending "parks" and "libraries" be included in the distance requirements as outlined in the Draft Ordinance, but wanted to clarify that State law does not require specific distances from those uses.

The Draft Ordinance also includes some modifications to Section 20.44.170(L)(1)(g) regarding the "Waitlist for Dispensaries/Retail Sales" to provide greater flexibility in moving applications off the Waitlist and a prohibition against drive-through facilities for cannabis sales in Section 20.44.170(F).

- E) Due to legislation (AB 133) that was just recently adopted by the State, SCI and City staff also modified the Draft Ordinance to address the fact that the State will now allow medical and adult use dispensaries to be located on the same premises. Previously the Draft Ordinance allowed for a maximum of 4 dispensaries (1 medical and 3 adult use dispensaries); and if the State law changed, it stated that the City would consider a combined use. SCI and City Staff were concerned that the medical only dispensary might be at a disadvantage with the adult use dispensaries also being allowed to have medicinal cannabis products. Therefore, the Ordinance was modified to state that the City would allow 4 dispensaries of any type, but at least one (1) of them would be required to dispense medicinal cannabis goods [see Footnote #1 of the Land Use Table in Section 20.44.170(A)]. There was also a change to the age of customers allowed on the premises due to the combined use in Section 20.44.170(F).

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

- F) The City of Merced is proposing to adopt an Ordinance (Attachment A) to amend the Zoning Code to provide regulations for Commercial Cannabis businesses in the City. Major provisions include:
- 1) Land Use Table showing which Cannabis Businesses are allowed in each Zoning District (C-C, C-O, C-G, I-L, and I-H).
  - 2) Regulations for Cultivation of Cannabis for Personal Use in Residential Zones

- 3) General Regulations & Operating Standards for All Commercial Cannabis Businesses
- 4) Additional Operating Standards for Dispensaries/Retail Sales, Delivery Services, Manufacturing, Commercial Cultivation, Testing Labs, & Distribution Businesses
- 5) Commercial Cannabis Business Permit Selection Process for:
  - a) Dispensaries/Retail Sales (Limited Number of Permits Available)
  - b) All Other Cannabis Businesses (No Limit on Number of Permits Available)
- 6) Fees and Taxes

The Findings that follow discuss the proposed Ordinance Sections in detail.

### **Section 20.44.170 (A)-- Zoning Compliance and Commercial Cannabis Permit Requirements**

- G) This Section contains Land Use Table 20.44-1, excerpted below, which spells out which zoning districts would allow the various commercial cannabis businesses with a Commercial Cannabis Business Permit. The footnotes also provide important information about the number of dispensaries, location restrictions in the City Center Area of the Regional/Central Commercial (C-C), and the distance requirements from sensitive uses, such as schools and parks. A “P” indicates where uses are Permitted and an “X” depicts where uses are Prohibited.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1						Additional Specific Use Standards
	Land Use Classification [4] [5]	C-C Zone	C-O Zone	C-G Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A (0-5000 sf)	X	X	X	P	P	Sec. 20.44.170(I)
Cultivator	Greenhouse, Type B (5001-10000 sf)	X	X	X	P	P	Sec. 20.44.170(I)
Cultivator	Greenhouse,Type C (10,001-22,000 sf)	X	X	X	P	P	Sec. 20.44.170(I)
Nursery	Greenhouse, Type D (Over 22,000 sf)	X	X	X	P	P	Sec. 20.44.170(I)
Manufacturing	Manufacturing, non-volatile	X	X	X	P	P	Sec. 20.44.170(H)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	Sec. 20.44.170(H)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	X	X	Sec. 20.44.170(F)
Dispensary [1][2]	Retail, non-medical/combined	P	X	P	X	X	Sec. 20.44.170(F)
Testing Laboratory	No Retail	P	P	P	P	P	Sec. 20.44.170(J)
Distribution [3]	Freight/Transport	X	X	P	P	P	Sec. 20.44.170(K)

#### **Footnotes**

1 - Only four (4) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use in the C-C and C-G zones only, but in no case shall more than four (4) dispensaries of any kind be allowed within the City of Merced at any one time.

2. – Dispensaries (medical or adult use) are prohibited in the City Center area between 19<sup>th</sup> and 16<sup>th</sup> Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.

3. – Only allowed in General Commercial (C-G) zones if meet the provisions of Section 20.44.170 (K)(10).
4. – If listed as “Permitted” in a specific zone above, then that use is also “Permitted” in Planned Development (P-D) zones that have the equivalent General Plan land use designation as that zone.
5. – No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and as required in Merced Municipal Code Section 20.44.170 (E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and as required in Merced Municipal Code Section 20.44.170 (E)(3)(f). No Commercial Cannabis Businesses may be located within a 600 foot radius from a school, day care center, recreational center, youth center, library or public park as required in Merced Municipal Code Section 20.44.170 (E)(3)(f).

### **Maps**

- H) City staff prepared maps (Attachments B1 through G1) that show where the Regional/Central Commercial (C-C), Professional/Commercial Office (C-O), General Commercial (C-G), Light Industrial (I-L), and Heavy Industrial (I-H) 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, one 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. All the maps also include the buffer areas (600 feet) from sensitive land uses, such as schools and parks. There is also a map included at Attachment C that shows the “City Center” Area within the Regional/Central Commercial (C-C) Zone.

Because the Planning Commission gave direction to look at a 1,000-foot buffer from schools only, additional maps have been included in Attachments B2, D2, E2, F2, and G2 that show the 1,000-foot buffer from schools for comparison purposes. As noted in Finding D2 above, City staff is recommending that the 1,000-foot buffer from schools only apply to dispensaries/retail sales and that the buffer for other commercial cannabis businesses remain at 600 feet, but that would not change the maps. If the Ordinance is adopted as recommended, the maps at Attachments B2, D2, E2, F2, and G2 would apply to Dispensaries/Retail Sales businesses, and the maps at Attachments B1, D1, E1, F1, and G1 would apply to all other commercial cannabis businesses.

Please note that the maps are included for illustrative purposes only and contain information that is current only up to the date of this staff report. As general plan amendments, zone changes or annexations occur, these maps are subject to change. City staff has recently added data to the maps regarding locations of day care centers and youth centers based on the State’s definition of such uses and those have also been incorporated into the maps. In preparing the revised maps above, City staff also noted a few errors in the location and identification of some schools and other sensitive uses in the older maps,

so those errors have been corrected in the revised maps. Confirmation of the distance that any proposed cannabis business is located away from schools, parks, and other uses will need to be confirmed at the time of application for a Commercial Cannabis Business Permit.

#### **20.44.170 (B)--Cultivation of Cannabis for Personal Use in Residential Zones**

- I) This Section contains provisions for personal cannabis cultivation, including:
- No more than six (6) cannabis plants, mature or immature, are permitted per residence for indoor cultivation for personal use.
  - Outdoor cultivation of cannabis is prohibited in all zones of the City.
  - Cultivation area cannot exceed 50 square feet or 10 feet in height (or be within 12 inches of the ceiling).
  - Can be in any residential structure on the property, including the main house, greenhouses, or detached accessory structures, as long as the cultivation area is fully enclosed, secure, not visible from the public right-of-way, and meets all building code requirements.
  - If the resident is not the property owner, they must have the owner's written permission specifically for cannabis cultivation and the property owner has the right to refuse or withdraw permission at any time.
  - The resident must reside full-time on the property and the premises cannot be used exclusively for cultivation.
  - Cannabis in excess of 28.5 grams must be kept in a locked space.

#### **20.44.170 (E)--General Provisions for All Commercial Cannabis Businesses**

- J) This Section spells out general provisions that are applicable to all commercial cannabis businesses in Merced. These provisions include:
- 1) Commercial Cannabis Business Permit (CCBP) Required**
    - Each business must have a Commercial Cannabis Business Permit in order to operate in the City of one of five types (Cultivation, Distribution, Manufacturing, Retail Sales/Dispensary, and Testing) and display it at all times:
    - A CCBP is valid for one year or until December 31 of each year.
    - A CCBP shall not be issued to anyone who has certain criminal convictions.
    - The CCBP is issued to a specific person or persons on the application, is non-transferable except with authorization by the City, and does not run with the land or the business.
  - 2) Maintenance of Records and Reporting**
    - All records must be retained for at least 7 years and be available with 24 hours of a request by a City official.
    - All businesses must obtain a seller's permit from the State Board of Equalization.

- Records include financial, personnel, training, contracts, permits/licenses, security, proof of insurance, and proof of building ownership or landlord/property owner written permission acknowledging the cannabis use.

**3) Operational Standards For All Commercial Cannabis Business Activities**

- Interior and exterior of the business property must be monitored by closed circuit cameras at all times, with specific requirements for those cameras and access for the Police Department via the internet.
- All controlled access areas, security rooms, all points of ingress/egress, and all point of sale (POS) areas shall have fixed camera coverage with specific requirements.
- Must have an active account with the State's "track and trace" system.
- No commercial cannabis business may be located within 600 feet of a school, day care center, ~~recreational center~~ or youth center as required by State law as well as a library, or public park (not including bike paths). Dispensaries/Retail Sales, however, will need to be 1,000 feet from a school and 600 feet from the other uses.
- Adequate parking and lighting shall be provided.
- All signage, packaging, and facilities shall be "unattractive to minors" as required by State law.
- Air treatment system required to ensure off-site odors shall not result with certain requirements, including mold control.
- Once a CCBP is issued by the City, the business has 180 calendar days to begin initial operations, unless otherwise approved by the City. If inoperative for more than 60 calendar days after initial operations, it shall be deemed abandoned and forfeited. Temporary suspensions of operations for a reasonable time can be approved.
- Testing, storage, and labeling of cannabis products shall meet State/City regulations.
- Disposal of all cannabis materials, including unsold products, shall conform with State and local regulations.
- Various requirements related to weighing devices, water usage, electrical, and plumbing
- Comprehensive general liability insurance of \$2 million minimum.
- No free samples of any cannabis or cannabis products can be given out at any time.
- Employees must wear ID badges, with specific requirements.
- Centrally-monitored fire & burglar alarm system required and monitored by a licensed alarm company licensed by the City.
- Meet all State deadlines and obtain State licenses within 6 months of the State beginning to issue licenses (may be waived if State takes longer).
- Notify the City within 10 days of applying for a State license.
- Documentation of employee safety practices:

**20.44.170 (F)—Additional Regulations for Cannabis Dispensaries/Retail Sales**

K) This Section spells out additional regulations for cannabis dispensaries as follows:

- Only four (4) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use in the C-C and C-G zones only, but in no case shall more than four (4) dispensaries of any kind be allowed within the City of Merced.
- No check-cashing activities allowed.
- Only one (1) dispensary permit per person.
- Restrooms to be locked during business hours and shall not be open to the public.
- Display of cannabis products shall be limited to the amount necessary to provide visual sample for customers.
- At all times when open, at least one security guard (registered) shall be on duty and shall monitor the site/immediate vicinity to ensure patrons do not consume cannabis on the premises or nearby. The guard is permitted to carry firearms, but it is not mandated.
- All cannabis products available for sale shall be securely locked and stored.
- Medical dispensaries shall maintain patient records (name, address, phone) and a copy of the physician recommendation or State-issued card.
- Video surveillance of all point-of-sale areas and areas where goods are displayed.
- Shall be open to the public at least 40 hours per week.
- Hours in the C-O Zone are limited to no earlier than 8 a.m. and no later than 7 p.m.
- Hours in all other zones are limited to no earlier than 8 a.m. and no later than 9 p.m.
- Exterior signage is limited to one (1) wall sign of no more than 20 square feet. Interior signs may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.
- On-site consumption of cannabis or cannabis products is specifically prohibited. Signs must be posted stating such.
- Age limits for patrons as required by State law (generally over 21 for adult use and over 18 for medical patients under certain conditions).
- Adequate signage that the City has not tested or inspected any cannabis products sold.
- No recommendations from a doctor for medical cannabis to be issued on-site.
- Shipments of cannabis goods limited to regular business hours.
- No on-site sale of alcohol or tobacco products.
- No on-site consumption of food, alcohol, or tobacco by patrons.
- Inventory shall be secured in a vault or similar item during non-business hours.
- No cannabis products shall be visible from the exterior.
- All required labeling as required by the State on all products.
- No drive-through facilities are allowed and no cannabis shall be sold through a drive-through facility.

**20.44.170 (G)—Additional Regulations for Commercial Cannabis Delivery Businesses**

- L) This Section spells out requirements on cannabis delivery businesses, including:
- Commercial cannabis deliveries may be made only from a dispensary permitted by the City and in compliance with all State regulations.
  - All employees shall have valid ID and a copy of the CCBP at all times.
  - Proof of Insurance for at least \$1 million required for all vehicles.
  - Deliveries may only take place during the hours of 8 a.m. and 7 p.m. daily.
  - Customers must retain copies of delivery receipts if required by State law.
  - May only deliver to a physical address in California, cannot leave the State.
  - Maintenance of delivery records as required by State law.
  - Compliance with State delivery limits regarding the amounts to be delivered.
  - A manifest of all required information to accompany any delivery person.
  - Delivery vehicles shall have a dedicated GPS device to locate the vehicle as required by State law.
  - Maximum limit of cannabis products carried by the vehicle is \$3,000 at any time.
  - Specific requirements for the delivery receipt.
  - The delivery service must provide a flyer regarding prohibited conduct per Health & Safety Code Section 11362.3 to all customers.

**20.44.170 (H)—Additional Requirement for Manufactured Cannabis Businesses**

- M) Additional requirements for manufacturing include:
- Manufacturing activities must meet all State regulations for extractions (volatile and non-volatile), repackaging and relabeling, and infusions.
  - Any manufacturing activity to be conducted must be included in the CCBP application and no other activities can be conducted without written permission from the City.
  - Inspections by the Fire Chief may be conducted anytime during business hours.
  - No exhibition, product sales area, or retail distribution.
  - All activities must occur entirely indoors within a fully enclosed and secured building.
  - An 8-foot high min. security fence with lockable gate required around the premises
  - Outdoor manufacturing is prohibited.

**20.44.170 (I)—Additional Requirements for Commercial Cannabis Cultivation Businesses**

- N) Additional regulations for commercial cannabis cultivation include:
- Registration with State Department of Pesticide Regulation if pesticides are used.
  - From the public right-of-way, there shall be no public evidence of cannabis cultivation.
  - Compliance with California Building and Fire Codes and the State Water Code.
  - All outdoor lighting for security shall be shielded and directed downward.
  - The use of generators for cultivation is prohibited.
  - Cannabis plants shall NOT be visible from the public right-of-way.
  - All cannabis cultivation must occur inside a fully enclosed and secured structure and within an 8-ft high security fence around the premises.
  - Outdoor Cannabis Cultivation is expressly prohibited.

**20.44.170 (J)—Additional Requirements for Cannabis Testing Laboratories**

- O) Cannabis testing laboratories must do the following:
- Must follow all State Regulations and maintain all certifications for a testing facility.
  - A licensed testing facility business, its owners, and employees may NOT hold an interest in any other cannabis business except for another testing business.
  - Inspections by the Fire Chief may be conducted at any time during regular business hours.

**20.44.170 (K)—Additional Requirements for Cannabis Distribution Businesses**

- P) Additional regulations for cannabis distribution businesses include:
- Must comply with all State Regulations.
  - Proof of bond for at least \$5,000 to cover cost of cannabis destruction.
  - Inspections by Police Chief may be conducted during business hours.
  - All cannabis goods batches must be stored separately and distinctly from other batches on the premises.
  - Specific labeling requirements on all shipments.
  - Harvest batches and edible products to be stored at 35 to 45 degrees Fahrenheit.
  - Harvest batches must be stored in dark area with no more than 60% humidity.
  - Temperature/humidity controls required. No outdoor storage allowed.
  - Employee break areas must be separated from cannabis storage areas.
  - Must take place in fully-enclosed and secured structure.
  - If in a C-G Zone, must be on a parcel no less than 20,000 square feet and all loading and unloading must take place within the fence.

**20.44.170 (L)--Commercial Cannabis Business Permit (CCBP) Selection Process**

- Q) This Section deals with the process for issuing Commercial Cannabis Business Permits in six specific areas:
1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available) (Conducted in 2 Phases)
  2. Selection Process for All Other Commercial Cannabis Businesses (No Limits on the Number of Permits Available) (Conducted in 2 Phases)
  3. Appeal of Denial of Commercial Cannabis Business Permit (All Types)
  4. Commercial Cannabis Business Permit Annual Renewal (All Types)
  5. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)
  6. Revocation of Commercial Cannabis Business Permit (All Types)
- R) **Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)**
- Phase 1—Initial Review**
- Initial Application Period is 21 calendar days and then application period is closed.
  - Director of Development Services reviews all applications for completeness.

- Each application that is deemed complete and in compliance with minimum eligibility requirements is placed on the “Qualified CCBP Application List—Dispensaries/Retail Sales” and notified in writing. All qualified applicants enter Phase 2.
- Any deficient applications shall be notified in writing within 21 calendar days and are given 10 calendar days to correct any deficiencies. If the deficiency is not corrected, the Director may deny the permit and notify the applicant within 10 calendar days.
- All applications received after the Initial Application Period will be placed on the “Waitlist for Dispensaries/Retail Sales.”
- Applications on the Waitlist will be moved to the “Qualified List” ~~on a 1 to 1 basis only~~ if the application passes Phase 1 and the number of qualified applicants falls below 5 if a CCBP becomes available, whether by creation of a new license or the forfeiture of an existing one.
- Same provisions apply to deficient applications as above.

#### **Phase 2—Final Review and Scoring**

- A Selection Panel, composed of the City Manager, Police Chief, and Director of Development Services or their Designees, is convened to make the final decision, based on the Merit-Based Scoring System, to determine which are the top 4 applications to recommend to the Planning Commission for the CCBP—Dispensaries/Retail Sales.
- Phase 2 requirements include additional background checks of all owners:
- Planning Commission will conduct public hearings and determine if the CCBP—Dispensaries/Retail Sales should be issued.

#### **S) Selection Process for All Other Commercial Cannabis Business Permits (No Limits on the Number of Permits Available)**

- Commercial Cannabis Business Permit (CCBP)—All Other Cannabis Businesses Process is the same as the CCBP Selection Process for Dispensaries/Retail Sales (2 Phases) except:
  - The Waitlist process can be suspended by the Director of Development Services if deemed not necessary based on the number of applications.
  - No Selection Panel is convened for Phase 2; the Director of Development Services makes the recommendation to the Planning Commission.
- The Planning Commission makes the decision on whether the CCBP should be granted.

T) The rest of this Section spells out procedures for appeals of a denial of a CCBP, annual renewals for a CCBP, appeals of a denial of an annual renewal, and revocation/suspension of a CCBP. In general, actions taken by the Director of Development Services can be appealed to the Planning Commission and Planning Commission actions can be appealed to the City Council, whose decision is final.

#### **CCBP Flow Chart, Merit-Based Scoring System, and Sample Application**

- U) A Flow Chart that describes the process for issuing a Commercial Cannabis Business Permit (CCBP) is included at Attachment H (Revised since October 18). A Draft of the

Merit-Based Scoring System used to score the applications for the four dispensary permits is included at Attachment I (Revised). A Draft sample of one of the application forms for a Commercial Cannabis Business Permit is also included at Attachment J (Revised). The Merit-Based Scoring System and application forms are still being refined and have been substantially modified since the October 18 meeting, but SCI and City Staff wanted to show the Planning Commission the Drafts in case the Commission has any suggestions or changes to offer. Regarding the Merit-Based Scoring System, more clarification about how the points will be awarded for each criteria, such as what experience or program will lead to a higher number of points being awarded, will be has been provided in the revised Attachment I, but City staff anticipates that the Merit-Based Criteria will continue to be refined in the future.

#### **20.44.170 (O)--Fees and Taxes**

V) Applicable Fees and Taxes for Commercial Cannabis Businesses include:

- Initial Application Fees for Initial Review (Phase 1) and Final Review (Phase 2) (Due at Initial Application for CCBP and to be adopted by the City Council by Resolution).
- Application Renewal Fees (due annually and to be adopted by the City Council by Resolution).
- Commercial Cannabis Regulatory Fee to cover the costs of enforcement and monitoring (due annually and to be adopted by the City Council by Resolution).
- All required taxes, including sales and use Taxes, business, payroll, etc.
- Additional cannabis-specific gross receipts, excise, cultivation, or other tax approved by the voters of Merced.

Although not included in the Draft Ordinance, by signing the application forms (sample at Attachment J), applicants will need to agree to participate in paying their pro-rata share of the cost of a ballot measure to create a specific tax for commercial cannabis businesses.

The draft application fees and annual regulatory fees are still being reviewed by City staff and will likely be presented to the City Council for adoption in late 2017. The fees will be based on the amount of staff time and expenses relating to processing the applications or conducting inspections of operating facilities.

#### **Timetable/Next Steps**

W) This proposed Ordinance will be considered by the Planning Commission at a public hearing on ~~October 18~~ November 8, 2017. The City Council public hearing is tentatively scheduled for November 20, 2017, with a second reading on December 4, 2017. The ordinance, if approved, would become effective 30 days after that or on January 4, 2018. The City Council will need to adopt application fees for Commercial Cannabis Business Permits as well as the annual Commercial Cannabis Regulatory Fee by Resolution. Deadlines for the initial applications for Commercial Cannabis Business Permits will need to be established (will likely be after the effective date of the Ordinance). Work will need to begin on a tax measure for the November 2018 ballot if that is desired.

### **Environmental Clearance**

- X) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e., no further environmental review is required) is being recommended (see Attachment K).

### **Attachments:**

- A) Proposed Ordinance (Revised)
- B) Map of Regional/Central Commercial Areas with Buffers from Sensitive Uses
  - 1) 600 feet from All Sensitive Uses (Revised)
  - 2) 1,000 feet from Schools and 600 feet from All Other Sensitive Uses (New)
- C) Map of “City Center” Area of the Central Commercial Zone
- D) Map of Commercial Office Areas with Buffers from Sensitive Uses
  - 1) 600 feet from All Sensitive Uses (Revised)
  - 2) 1,000 feet from Schools and 600 feet from All Other Sensitive Uses (New)
- E) Map of General Commercial Areas with Buffers from Sensitive Uses
  - 1) 600 feet from All Sensitive Uses (Revised)
  - 2) 1,000 feet from Schools and 600 feet from All Other Sensitive Uses (New)
- F) Map of Light Industrial Areas with Buffers from Sensitive Uses
  - 1) 600 feet from All Sensitive Uses (Revised)
  - 2) 1,000 feet from Schools and 600 feet from All Other Sensitive Uses (New)
- G) Map of Heavy Industrial Areas with Buffers from Sensitive Uses
  - 1) 600 feet from All Sensitive Uses (Revised)
  - 2) 1,000 feet from Schools and 600 feet from All Other Sensitive Uses (New)
- H) Flow Chart of Commercial Cannabis Business Permit Process (Revised)
- I) Draft Merit-Based Selection Criteria (Revised)
- J) Sample of a Commercial Cannabis Business Permit Application (Revised)
- K) Notice of Exemption (Environmental Review #17-10)
- L) Letter from Mark Yandow (10/26/17)
- M) Draft Planning Commission Resolution (Revised)