

**Merced City Council
678 W 18th St.
Merced, CA 95340**

**Attn: Mayor Mike Murphy;
Mayor Pro Temore Jill McLeod;
Council Member Kevin Blake;
Council Member Michael Belluomini;
Council Member Josh Pedrozo;
Council Member Anthony Martinez;
Council Member Matthew Serratto**

**Cc: City Manager Steve Carrigan;
Economic Development Director Scott McBride;**

Dear Council,

I am writing in respect to your consideration of the merit based point system for the selection of commercial cannabis licensees in the City of Merced. While recognizing the difficulty of developing an objective metric under which applicants will be judged, I believe that various aspects of the proposed standard could be construed as arbitrary, or even subjective to select locations or applicants.

I commend City Staff and SCI for their inclusion of Section 5 (f) and (g), which recognizes the State's previously established standard for the safe and responsible establishment and management of a medical cannabis entity in California. However, Section 5 (a) (b) (c) (d) and (e) favors applicants from areas of California that have established experience in approved "legal" cannabis businesses for several years. No one has yet defined what "verified successful management of a legal retail facility" means. As you know, no entity or applicant in Merced, Madera or Stanislaus County would meet those criteria except for the few that have formed Mutual Benefit Non-Profit Corporation (Cannabis Collectives) under the 2008 Attorney General Guidelines for the Security and Non-Diversion of Marijuana grown for medical purposes. This, as well as proof of payment of taxes to the Board of Equalization from such entities are the only truly objective metric by which one could gauge 'legal experience' as a cannabis entity, keeping in mind the fact that until the present time there has never been an affirmative right to engage in cannabis activity under California Law, merely an affirmative defense in the event of prosecution.

The currently proposed standard for experience of 'verified successful management of a legal retail facility' lends itself to the assumption that applicants from areas outside of the San

Joaquin Valley Region in jurisdictions with a more historically tolerant political and legal atmosphere with respect to cannabis will be at an advantage in the selection process.

These businesses must pay for their impacts upon communities. But in addition to the tax and fee revenue that the city should receive from these businesses, the larger community should benefit like they do from other local businesses. The owners, operators and employees, who live here, go to restaurants here and to shop here would provide that greater benefit. That goal is enhanced with some of the criteria in this resolution, but most of Section 5 effectively erases what should be a strong local preference. It favors out of town interests at the cost of local interests.

I would therefore propose that Section 5, subsections (a-e) be eliminated.

Further, Section 2 (a) and (b) award points for a proposed location that is either between 1,600 to 2,000 or more than 2,000 ft. away from a school, respectively. The sensitive use standard set by the State of California for schools is 600 ft. In your discretion as a local governing body, you decided to extend this to 1,000 ft. per recommendation from the planning commission. This is the objective standard by which ALL applicants must abide in order to qualify as an applicant during phase one of the application process. For locations that are at least 1,000 ft. away from schools, there will undoubtedly be a number of streets, buildings, and physical and logistical barriers which render any type of relative interference or disturbance from the subject property a non-issue. Moreover, Section 3 (c), which awards points for available parking that exceeds that required by city ordinance, presents an unnecessary deprivation of points for prospective applicants who may otherwise be well-suited as recipients of a permit with facilities that pass muster for the nature of use under the City's zoning standard.

By proposing to award points for locations that exceed these objective standards, the city is essentially resuming its consideration of issues previously decided and depriving objectively suitable locations from the benefit of being awarded points despite having met the City's previously established standards. Accordingly, I would respectfully request that these provisions be eliminated from the scoring metric.

I appreciate your consideration in this matter.

Sincerely,



Zach Drivon

January 2, 2018

City Council of the City of Merced
678 West 18th Street
Merced, CA 95340

Dear Mr. Mayor and Honorable Councilmembers:

I am writing to voice my concerns related to the “Merit Based Selection Criteria for Scoring Commercial Cannabis Business Permit Applications” resolution before you at your January 2, 2018 City Council meeting. It is clear that the City’s goal is to make it known that these uses are expected to operate at a level that limits any community impact to the greatest extent possible – incentivizing only the “best” practices is of chief importance in this regard.

As a resident of the City and a professional land use planner, I applaud you and your staff’s efforts to address cannabis regulation efficiently and with deliberate thought to the effects of regulation on all residents of Merced. While I generally support the Council’s approach to regulation on cannabis retail within the City, I do have a number of concerns related to enforceability, neighborhood impacts, and consistency with community goals.

It is a truth experienced by other states and municipalities that have approved recreational cannabis use that the benefits of cannabis retail are partnered with relatively minor externalities on neighborhoods. Based on my own professional experience and review of documented experience from other permitting agencies, I humbly offer the below suggestions and questions for the Council’s consideration:

Section 1: Prioritize Medicinal Cannabis Access

Question: What assurance is in place that medicinal use applicants will fulfill the goals of this section for the lifetime of their operation? Consider that a given business may change its licensure with the State Bureau of Cannabis Control (BCC), and may change from operating medicinal and adult use retail to adult use retail only.

While the City would receive notice of such a licensure change from the BCC, it would occur after “merit based” selection takes place and the business may be in operation, and it does not appear that the approved ordinance would require (or allow) revocation of a permit with a change in licensure. The Council may wish to consider how to address such a situation, or incentivize medicinal cannabis access in a different manner.

Section 2: *Geographical Preference / Neighborhood Relations*

- *Item A: Proposed location is over 1,600 to 2,000 feet away from schools (City requires 1,000 feet)*
 - **Suggest:** Consider revising to include “day care center, youth center, library, or public park” as adopted in ordinance 2480 section 20.44.170(E)(3)(f).
 - **Suggest:** Consider incentivizing minimum separation distance between retailers. 1,000 feet is used in other jurisdictions.
 - **Suggest:** Consider incentivizing minimum separation between retail use and residentially-zoned property.
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Section 3: *Facility Plan*

- *Item C: Location exceeds City Parking Requirements by 10% or more.*
 - It is well-documented that excessive parking requirements are an inefficient use of a City’s commercial spaces. Incentivizing excessive parking conflicts with the City’s goals for sustainable and efficient development.
 - In shopping centers and strip malls, development patterns and shared parking agreements typically make such an item unnecessary.
 - **Suggest:** Remove this requirement, incentivize the provision of bicycle parking within 100 feet of the storefront.
 - **Suggest:** Provide points for applicants providing signage details for a sign consistent with the City’s municipal code section 20.62 and a commitment for application to the City for design review of the signage consistent with section 20.68.030.
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Section 4m – *Proposal includes any proposed “green” business practices relating to energy and climate, water conservation, and materials/waste storage.*

Suggest:

- Replace “green” with “sustainable.”
- The City may consider a “menu” of practices that would score points in this category, similar to practices commonly considered sustainable (see Policy SD-1.7, action 1.7.c from the City’s General Plan Sustainable Development element).
- If the City wishes to incentivize practices consistent with the Sustainable Development element, Council may wish to consider awarding more points to applicants undertaking a

minimum number of sustainable business practices. (i.e. 3+ practices = 2 points, 5+ practices = 3 points, etc.)

Section 7: *Employee Relations/Community Benefits*

- Item D – *Proposal includes and ongoing public information program to inform City residents of cannabis issues and proper/safe/legal use of cannabis products.*
 - **Question:** Is this expected to be a stand-alone effort by each business? How will this be audited/enforced? Will there be a City-run information program that individual businesses may contribute to?
- Item E - *Proposal includes benefits to the community, such as defined contributions or donating time to community organizations or charities.*
 - **Question:** How will community organizations be defined? How would this be enforced?

Thank you for your time and consideration of this important resolution. I welcome any questions related to my comments in advance of the meeting.

Sincerely,

Steven Maxey
steven.maxey@gmail.com

cc:
S. Carrigan
S. McBride

Dear Council,

We have done some further research and wanted to make clearer the issue of imbalance in the merit system if points are awarded for both "verified Mutual Benefit Non-profit Corporations" and those with "verified successful management of legal retail cannabis facility".

In fact, an overwhelming majority of applicants from across the state whose former or existing operations might qualify as "verified successful management of a legal retail cannabis facility" are also "Mutual Benefit Non-Profit Corporations". These are the appropriate entities through which medical marijuana collectives have been organized under the 2008 Attorney General Guidelines permitting such activity. Without that organizational structure, they could not have opened such a business and apprised themselves of protection from prosecution under state law.

If a local community somewhere in California permitted the sale of legal retail marijuana without such a designation we are unaware of it.

With rare and exclusive exception, none of the dispensaries that have operated in the Central Valley with the Mutual Benefit Non-Profit designation have been also granted local government approval for retail sales of marijuana. There are certainly none who've had the benefit of local government approval throughout Merced, Madera or Stanislaus County. Many of the dispensaries in other parts of the state, however, have been allowed to expand through local government action.

All applicants who seek permits should be granted points for having the state approved Mutual benefit non-profit Benefit Corporation status. However, granting additional points to entities that have that status and have also been allowed to operate more broadly by a local government jurisdiction, effectively creates an uneven playing field that penalizes Central Valley applicants.

We would respectfully suggest the council's merit based point system recognize this imbalance and not award any additional points to applicants with "verified successful management of a legal retail cannabis facility". Such action would not exclude any applicant. It would simply give them no more, or no less points for following the law as declared by the state of California prior to the introduction of the regulatory structure for commercial cannabis businesses.

Respectfully Submitted,



Zach Drivon
Attorney

Community-sensitive 320 Point System

To the City of Merced,

Staff has done a great job in creating a merit-based system. However the Merit system should only be 1 leg in a 4 legged chair. The other 3 legs should consist of law enforcement and security, the real estate involved and its effects on the community, and the general concerns of the city as demonstrated by the council. The 3 people already chosen by the council are exactly that: security (Chief of Police), zoning (Planning Director), and general concerns of a city and the council (City Manager).

It's apparent that the staff and council have done their diligence installing this structure with great foresight. Still, I would use caution not to strip away the ability to make the proper decision at the last minute, where necessary. A checklist will not create a competitive environment and thus will not produce the best candidate. The city of Merced has said many times it wants to set and be the example. This should include having the best business operators to protect the community.

My suggestion would be to give equal discretion to each leg of the 4 legged chair. If the Merit-based system has 80 points then each of the 3 leaders of the community that you have chosen should also have 80 points totaling 320 points.

A Merit-based system only encourages people to do the bare minimum. Considering the city will partner themselves with these future business entities, it's imperative that the city be given the opportunity to choose the best candidates.

Under the current Merit only system:

It's possible and likely that someone will score 78 while superior candidates will score 77 or even 70. What happens if both are current operators within 100 miles of Merced and the higher score has spent \$50k on his storefront, does all the Merit-based items at a minimum, and produces BOE receipts that project a mere \$60,000 in annual city revenue. While the lower scoring entity invests \$400k in a storefront and has BOE receipts projecting \$800k annually for the city. Please keep in mind the volume of sales is a direct indicator as to what the community has chosen as their preferred place of business.

The Merit-based system will choose the wrong candidate. The 3 most qualified people that you have chosen have been stripped of their authority to help make the right decision. To discount their value to anything less than an equal amount of points is to discount all the work and concerns the council has presented over many city meetings.

I plead with the council to trust its prior decision. You have trusted professionals that you know are qualified and have been present to all the city meetings. They know security, zoning and the general concerns of the council and city better than anyone. Let's give them equal scoring.

Community-sensitive 320 Point System

Give each category 80 points:

80 Merit scoring system

80 Law enforcement

80 Planning

80 City Management

320 points in total

These points can be given subjectively to candidates who demonstrate or prove they will go above and beyond expectations and meet the community's needs.

Greater scoring ranges and leveraging intelligent and experienced city authorities also minimizes a situation where you have 40 candidates ending up in a tie while maximizing the ability to choose the most qualified candidates.

Respectfully,

Ron Roberts

Guaranty Holdings of California, Inc.

209-602-7444