



## Legislation Details (With Text)

**File #:** 21-276      **Version:** 1      **Name:**  
**Type:** Public Hearing Item      **Status:** Passed  
**File created:** 3/26/2021      **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority  
**On agenda:** 5/3/2021      **Final action:** 5/3/2021  
**Title:** SUBJECT: Public Hearing to Consider Adoption of a Categorical Exemption and Introduction of an Ordinance Amending Sections 20.74 (Appeals), 20.44.170 (Commercial Cannabis Businesses), 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice And Hearings) of the Zoning Ordinance Regarding Appeals and the Number of Votes Required for Planning Commission Action

### REPORT IN BRIEF

Adopt a Categorical Exemption and Introduce an Ordinance amending various sections of the Zoning Ordinance regarding appeals and the number of votes required for Planning Commission action.

### RECOMMENDATION

City Council - Adopt a motion:

A. Adopting a Categorical Exemption (Environmental Review #21-03); and,

B. Introducing Ordinance 2523, an Ordinance of the City Council of the City of Merced, California, Amending Sections 20.74 (Appeals), 20.44.170 (Commercial Cannabis Businesses), 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice And Hearings) of the Merced Municipal Code Regarding the Timing of Appeals and the Number of Votes Required To Adopt Planning Commission Actions.

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. Draft Ordinance (Redlined Version), 2. Proposed Modifications to MMC 20.74 (Appeals), 3. Proposed Modifications to MMC 20.44.170 (Commercial Cannabis Businesses), 4. Proposed Modifications to MMC 20.64 (Administrative Responsibility), 5. Proposed Modifications to MMC 20.68 (Permit Requirements), 6. Proposed Modifications to MMC 20.70 (Public Notice and Hearings), 7. Planning Commission Resolution #4061, 8. Environmental Review #21-03 (Categorical Exemption), 9. Draft Ordinance, 10. Presentation

Date	Ver.	Action By	Action	Result
5/3/2021	1	City Council/Public Finance and Economic Development Authority/Parking Authority	approved	Pass

*Report Prepared by: Kim Espinosa, Planning Manager, Development Services Department*

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## RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting a Categorical Exemption (Environmental Review #21-03); and,
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## ALTERNATIVES

1. Introduce the Ordinance, as recommended by the Planning Commission and staff; or,
2. Introduce the Ordinance, subject to modifications by City Council (identify specific items to be amended in the motion); or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items (to be addressed in the motion); or,
5. Continue to a future City Council meeting (date and time to be specified in motion).

## AUTHORITY

Merced Municipal Code Section 20.80, "Zoning Ordinance Amendments," spells out procedures for amending the Zoning Ordinance.

## CITY COUNCIL PRIORITIES

None.

## DISCUSSION

### Summary of Proposed Changes to Zoning Ordinance

Various changes to the Zoning Ordinance are being proposed regarding appeals and the number of votes required for Planning Commission actions. In general, the changes can be summarized as follows:

- 1) Changing the language in Chapter 20.74 (Appeals) so that appeals of actions by the Planning Commission, Site Plan Review Committee, and the Director of Development Services would be scheduled for a public hearing by the appropriate review authority and heard within 90 days unless otherwise mutually agreed to by the applicant and appellant or continued for good cause; and modifying Section 20.44.170 (Commercial Cannabis Businesses) so that the appeal procedures for Commercial Cannabis Business Permits match the same language (the current requirement is 30 days).
- 2) Clarifying the language in Chapters 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice and Hearings) to make it clear that it requires 4 votes of the Planning Commission members to approve an action; otherwise, it is deemed denied.

## Proposed Changes to the Code Regarding Appeals

In the past, there has been some confusion regarding the timing of appeals in that the language in the Zoning Ordinance only referred to “scheduling” the item for a public hearing. It was not clear if that meant the item must be heard within that time frame or not. It also was not clear if the applicant and/or the appellant could agree to a longer time frame.

The following changes to Chapter 20.74 (Appeals) and Section 20.44.170 (Commercial Cannabis Businesses) are proposed in the Draft Ordinance at Attachment 9 (redlined version at Attachment 1) and presented in the modified Chapters at Attachments 2 through 3:

- 1) Section 20.74.030(E)(1) “Filing and Processing of Appeals, Report and Noticed Hearing” would be changed to read as follows: *“1) When an appeal has been filed, the Development Services Department shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate review authority. Said public hearing should be heard within 90 calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued by the appropriate review authority pursuant to 20.74.030(F)(3).”*
- 2) Section 20.44.170(L)(4)(b) “Appeal of Denial of Commercial Cannabis Business Permit (All Types)” would be changed to read as follows: *“b) When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(4)(d) .”*
- 3) Section 20.44.170(L)(6)(b)(i) “Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)” would be changed to read as follows: *“b) Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services. i.) When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(v).”*
- 4) Section 20.44.170(L)(6)(b)(vi)(b) “Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)” would be changed to read as follows: *“vi.) The decision of the Planning Commission may be appealed to the City Council. a) A written appeal shall be filed within five (5) business days (excluding official City holidays) following a Planning Commission decision. b) When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within ~~thirty (30)~~ ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(6)(b)(vi)(e).”*
- 5) Section 20.44.170(L)(8)(c)(i) “Revocation of Commercial Cannabis Business Permit (All Types)” would be changed to read as follows: *“c) Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services. i.) When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission. The public hearing should be heard within ~~(thirty) 30~~ ninety (90) days of receiving the appeal, unless otherwise mutually agreed to by the*

- applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(v)."
- 6) Section 20.44.170(L)(8)(c)(vi)(b) "Revocation of Commercial Cannabis Business Permit (All Types)" would be changed to read as follows: *"vi.) The decision of the Planning Commission may be appealed to the City Council. a) A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision. b) When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council. The public hearing should be heard within thirty (30) ninety (90) calendar days of receiving the appeal, unless otherwise mutually agreed to by the applicant and appellant or continued pursuant to 20.44.170(L)(8)(c)(vi)(e)."*

#### Proposed Changes Related to the Number of Votes Needed to Approve Planning Commission Actions

City staff recently noticed that the Zoning Ordinance was not clear on how many votes it took for the Planning Commission to approve an item. (Such information for the City Council is included in the City's Charter, but it is unclear about how it applies to the Planning Commission.) Therefore, staff is proposing to amend the Ordinance in order to make it clear that it takes four (4) votes of the Planning Commission members to approve an item.

The following changes to Chapters 20.64 (Administrative Responsibility), 20.68 (Permit Requirements), and 20.70 (Public Notice and Hearings) are proposed in the Draft Ordinance at Attachment 9 (redlined version at Attachment 1) and presented in the modified Chapters at Attachments 4 through 6:

- 1) Section 20.64.040 "Administrative Responsibility, Planning Commission" is proposed to be changed to read as follows:  
*"The role of the Planning Commission in the administration of the Zoning Ordinance includes:*
  - A) *Serving as the review authority on permit and approval applications as shown in Table 20.64-1;*
  - B) *Reviewing appeals filed from Site Plan Review Committee decisions on Site Plan Review permit applications;*
  - C) *Reviewing appeals filed from Development Services Director decisions on discretionary permit applications; and,*
  - D) *Providing recommendations to the City Council on legislative actions as shown in Table 20.64-1; and,*
  - E) *All decisions or recommendations of the Planning Commission noted above shall require at least four (4) members of the Planning Commission to vote to approve such an action; otherwise, the action is deemed denied.*
- 2) Section 20.68.020(C)(1) "Permit Requirements, Conditional Use and Minor Use Permits, Review Authority" would be changed to read as follows: *"Conditional Use Permits. The Planning Commission shall take action on all Conditional Use Permit applications. At least four (4) members of the Planning Commission shall be required to vote to approve a Conditional Use Permit; otherwise, the Permit is deemed denied."*
- 3) Section 20.68.030(C)(1) "Design Review Permit, Review Authority" would be changed to read as follows: *"Planning Commission. The Planning Commission shall take action on all Design Review Permit applications except as specified in Sections 2 and 3 below. At least four (4) members of the Planning Commission shall be required to vote to approve a Design Review Permit; otherwise, the Permit is deemed denied."*
- 4) Section 20.68.070(C) "Variance" would be changed to read as follows: *"Review Authority. The*

*Planning Commission, acting as the Board of Zoning Adjustment, shall take action on all Variance applications. At least four (4) members of the Planning Commission shall be required to vote to approve a Variance; otherwise, the Variance is deemed denied.*

5) Section 20.70.050 would be changed to read as follows:

*“20.70.050 Decision or Recommendation by Planning Commission*

*A. After a public hearing, any decision of the Planning Commission shall require at least four (4) members of the Planning Commission to vote to approve an action; otherwise, the action is deemed denied.*

*B. After a public hearing resulting in a Planning Commission recommendation to the City Council, the Development Services Department shall forward the recommendation to the City Council. A copy of the recommendation shall be mailed to the applicant at the address shown on the application. If at least four members of the Planning Commission do not vote to recommend approval or denial, then that action shall be deemed a recommendation of denial.”*

### Environmental Clearance

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* is being recommended (see Attachment 8).

### Planning Commission Action

On March 17, 2021, the Planning Commission held a public hearing on Zoning Ordinance Amendment #21-01. No one from the public testified on the matter. The Planning Commission voted 5-0 (5 ayes, 0 no, 1 absent, 1 vacancy) to recommend approval. (See Planning Commission Resolution #4061 at Attachment 7).

### City Council Action

After the public hearing, the City Council should consider adopting a Categorical Exemption and introducing the Ordinance at Attachment 9. If the City Council introduces the Ordinance on May 3, 2021, a 2<sup>nd</sup> reading and adoption would follow on May 17, 2021, with the Ordinance being effective 30 days later or on or about June 17, 2021.

## **IMPACT ON CITY RESOURCES**

No impact on City resources.

## **ATTACHMENTS**

1. Draft Ordinance (Redlined Version)
2. Proposed Modifications to MMC 20.74 (Appeals)
3. Proposed Modifications to MMC 20.44.170 (Commercial Cannabis Businesses)
4. Proposed Modifications to MMC 20.64 (Administrative Responsibility)
5. Proposed Modifications to MMC 20.68 (Permit Requirements)
6. Proposed Modifications to MMC 20.70 (Public Notice and Hearings)
7. Planning Commission Resolution #4061
8. Environmental Review #21-03 (Categorical Exemption)
9. Draft Ordinance

## 10. Presentation