



## Legislation Text

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**File #:** 18-553, **Version:** 1

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*Report Prepared by: Michael Hren, Principal Planner, Planning Division*

**SUBJECT: Public Hearing and Appeal of Planning Commission Approval of Commercial Cannabis Business Permit #18-14R**

### **REPORT IN BRIEF**

Request by Medallion Wellness to appeal and reverse the Planning Commission's approval of Commercial Cannabis Business Permit #18-14R.

### **RECOMMENDATION**

Option A - Adopt Resolution (Attachment 4) affirming the Planning Commission's approval of Commercial Cannabis Business Permit #18-14R.

Option B - Adopt Resolution (Attachment 5) reversing the Planning Commission's approval of Commercial Cannabis Business Permit #18-14R.

Option C - Adopt Resolution (Attachment 6) modifying the Planning Commission's approval of Commercial Cannabis Business Permit #18-14R.

### **City Council - Adopt a motion:**

A. Adopt **Resolution 2018-\_\_**, A Resolution of the City Council of the City of Merced, California, affirming the Planning Commission's Approval of Commercial Cannabis Business Permit #18-14R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services, at 863 W. 15th Street, and denying an appeal by Medallion Wellness and its agents; or,

B. Adopt **Resolution 2018-\_\_**, A Resolution of the City Council of the City of Merced, California, reversing the Planning Commission's Approval of Commercial Cannabis Business Permit #18-14R, denying issuance of Commercial Cannabis Permit #18-14R and causing the next highest-scoring application for a Commercial Cannabis Business Permit using the city's merit-based scoring criteria, to be heard for one of the available four Commercial Cannabis Business Permits to operate a retail dispensary of cannabis and cannabis-based products at a future public hearing at a meeting of the Planning Commission; or,

C. Adopt **Resolution 2018-\_\_**, A Resolution of the City Council of the City of Merced, California, modifying the Planning Commission's Approval of Commercial Cannabis Business Permit #18-14R to allow Harvest of Merced, LLC. to operate a retail dispensary for medicinal and adult use cannabis

and cannabis-related products, including delivery services, at 863 W. 15th Street.

## ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, with modifications; or,
3. Continue to a future City Council meeting (date and time to be specified in the motion).

## AUTHORITY

City of Merced Ordinance #2480/Merced Municipal Code Section 20.44.170.

## DISCUSSION

### Project Description

Commercial Cannabis Business Permit (CCBP) #18-14R is an application for a permit to utilize the property at 863 W. 15th Street for cannabis-related business activities. The permit seeks to allow Harvest of Merced, LLC. to operate a Retail Dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services. Staff recommended approval with conditions at the Planning Commission meetings of September 18 and September 19, 2018. The Planning Commission approved CCBP #18-14R after a public hearing on September 19, 2018.

Medallion Wellness asserts that Commercial Cannabis Business Permit (CCBP) #18-14R as approved by the Planning Commission on September 19, 2018, is in violation of Merced Municipal Code Section 20.44.170(E), subsection 3, part f, which states that, “No Cannabis dispensary may be located within a 1,000-foot radius from a school...”.

The City Council’s review of this appeal is limited to review of the Planning Commission decision to grant Commercial Cannabis Business Permit #18-14R and is not a *de novo* review pursuant to Merced Municipal Code 20.44.170L(3). As such, the Council will only consider the information presented to the Planning Commission at the public hearings on September 18 and 19, 2018, and will then determine whether the Planning Commission decision should be affirmed, reversed, or modified.

Commercial Cannabis Business Permit #18-14R is the sole subject of this appeal and the Council cannot take into consideration factors or details related to any other Commercial Cannabis Business Permit Application.

### Background

Commercial Cannabis Business Permit application #18-14R has passed the Phase I and Phase II screening process. Background checks on all owners were performed to the satisfaction of the Chief of Police. Public hearings regarding this application were held at the September 18 and September 19, 2018, meetings of the Planning Commission. Public testimony was closed on the September 18 meeting with no further public testimony scheduled.

At the September 19 meeting, representatives from Medallion Wellness requested that public testimony be reopened to speak regarding Commercial Cannabis Business Permit #18-14R, Harvest of Merced. During that testimony, Medallion Wellness’ representatives presented documents which

included a printout from Google Earth and argued that 863 W. 15th Street is within 1,000 feet of a sensitive use, specifically the Wolfe Education Center.

Representatives for Harvest of Merced, LLC., the applicant, argued in rebuttal that their investigation indicates that their property is outside the 1,000 foot buffer for sensitive uses.

City staff, when asked for comments by Planning Commission Chairperson Dylina, provided the following:

City of Merced Ordinance #2480 states that “School” means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes or as otherwise provided in Health and Safety Code Section 11362.768(h).

City staff investigated the matter of student attendance at the Wolfe Education Center prior to the receipt of Commercial Cannabis Business Permit applications in the first quarter of 2018, in response to inquiries regarding nearby properties. Staff reached out to representatives from the Merced County Office of Education (MCOE), the property owner, to determine if the Wolfe Education Center was used for activities that involved students, specifically minors. A representative for MCOE informed staff that students attended the 732 W. 13th Street address. City staff took this information and determined that this address corresponded to Assessor’s Parcel Number 031-313-012, and created a 1,000-foot buffer around this parcel for the purposes of cannabis-based business applications. According to the GIS-based mapping tool used by the City, Commercial Cannabis Business Application #18-14R is outside of this 1,000 foot buffer.

MCOE also owns an additional parcel, APN 031-313-013, 760 W. 13th Street; however there was no indication that any kindergarten through 12th grade education occurred on this parcel. This parcel was therefore not included in the sensitive use buffer.

After considering the foregoing, the Planning Commission voted 6-0, with one abstention, to approve Commercial Cannabis Business Permit #18-14R to Harvest of Merced, LLC.

It is staff’s recommendation that the City Council move forward with Option A and Adopt Resolution (Attachment 4) affirming the Planning Commission’s approval of Commercial Cannabis Business Permit #18-14R.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

## **ATTACHMENTS**

1. Ordinance #2480
2. Planning Commission Record
3. Letter of Appeal, Including Exhibits A through G
4. Resolution 2018-\_\_ Affirming Planning Commission's Approval
5. Resolution 2018-\_\_ Reversing Planning Commission's Approval
6. Resolution 2018-\_\_ Modifying Planning Commission's Approval
7. City Council Packet from October 25, 2018 Meeting
8. Additional Items Provided at October 25, 2018 City Council Meeting
9. Staff Presentation