



Legislation Text

File #: 19-434, **Version:** 1

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SUBJECT: Public Hearing Regarding Appeal of Planning Commission Approval of Commercial Cannabis Business Permit #18-14R Filed by Jiva Life, LLC

REPORT IN BRIEF

Request by Jiva Life, LLC. to appeal and reverse the Planning Commission's approval of Commercial Cannabis Business Permit (CCBP) #18-14R for Harvest of Merced.

RECOMMENDATION

City Council - Adopt a motion:

A. Option A - To affirm the Planning Commission's approval of CCBP #18-14R:

Adopting **Resolution 2019-__**, a Resolution of the City Council of the City of Merced, California, granting 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 making certain findings in connection therewith; or,

B. Option B - To reverse the Planning Commission's approval of CCBP #18-14R:

Adopting **Resolution 2019-__**, a Resolution of the City Council of the City of Merced, California, denying 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 making certain findings in connection therewith.

ALTERNATIVES

1. Allow the permit, denying the appeal and affirming the action of the Planning Commission; or,
2. Deny the permit; approving the appeal and reversing the action of the Planning Commission; or,
3. Continue to a future City Council meeting (date and time to be specified in the motion).

AUTHORITY

City of Merced Ordinance #2498/Merced Municipal Code Section 20.44.170 regulates Commercial Cannabis Business Permits in the City.

DISCUSSION

History

This appeal relates to the approval of an application for a permit to utilize the property at 863 W. 15th Street (location map for this property at Attachment 1, aerial map at Attachment 2) for cannabis-related business activities. The permit would allow Harvest of Merced, LLC. to operate a Retail Dispensary for medicinal and adult use cannabis and cannabis-related products, including delivery services. The project proposed to use and modify an existing building, which has existing access to utilities (floor plan at Attachment 3 and photographs of the existing property at Attachment 4).

On September 18 and September 19, 2018, the Planning Commission considered and approved CCBP #18-14R at a duly noticed public hearing. That approval was appealed and the City Council reversed the approval at a duly noticed public hearing on October 25, 2018. The City Council remanded the matter back to the Planning Commission for the Planning Commission to determine, and make a finding of fact as to whether the properties located at 732 W. 13th Street (APN 031-313-012) and 760 W. 13th Street (APN 031-313-013) meet the definition of “school” per City of Merced Ordinance #2480, and whether the property located at 863 W. 15th St., identified above, is within 1,000 feet of a school.

The Planning Commission, at a duly noticed public hearing on November 14, 2018, based upon the information in the record, made a determination that both of the properties at 760 W. 13th St. and 732 W. 13th St., more commonly known as the Wolfe Education Center, met the definition of a “school” per Merced Ordinance #2480. Based on that determination, the Planning Commission determined that the property at 863 W. 15th St. is within 1,000 feet of a school. Based on those determinations, the Planning Commission voted 6-0, with one abstention, to deny Commercial Cannabis Business Permit #18-14R for Harvest of Merced.

On December 3, 2018, the City Council heard an appeal of this denial. Included in the points of the appeal was the assertion that a previously undisclosed communication had occurred between a Planning Commissioner and Mr. Tinetti, the owner of the property at 863 W. 15th Street, and that this communication made the public hearing held on November 14, 2018, unfair. At the December 3, 2018, meeting, Planning Commission Chairperson Dylina disclosed to the City Council a communication with Mr. Tinetti that he had previously failed to make known. The City Council voted to Reverse the decision of the Planning Commission and remand the matter back to the Planning Commission, for another vote on the matter to be held without Chairperson Dylina participating.

On March 4, 2019, the City Council adopted Ordinance 2498, amending Section 20.44.170 of the Merced Municipal Code which deals with cannabis regulations. 20.44.170(C).48 now clarifies that, “ ‘School’ means those sites upon which full-time instruction in any of grades K through 12 is provided where the primary purpose is education, as determined in the sole discretion of the City Council, and which are identified as a school on the City’s official ‘List of Schools’ as provided in Section 20.44.170 (E)(3)(f)(i). ‘School’ does not include any private site upon which education is primarily conducted in private homes.” The City’s Official List of Schools (Attachment 5), includes both parcels comprising the Wolfe Education Center, 732 and 760 W. 13th Street. Because of this, the Planning Commission did not need to make a determination regarding the Wolfe Education Center’s status as a school.

The subject site is required to be more than 1,000 feet from any schools and more than 600 feet from any day care centers, youth centers, libraries, or public parks that are currently in existence, as per required by Section 11362.768 of the Health and Safety Code and Section 20.44.170(E).3.f of City of Merced Ordinance #2498 for retail cannabis businesses (Attachment 6). In order to remedy the distance issue between 863 W. 15th Street and the Wolfe Education Center, the property owner of

863 W. 15th Street submitted a Lot Line Adjustment for the property. This adjustment removed approximately 452 square feet from the proposed site of Harvest of Merced, and incorporated that area into 855 W. 15th Street, a property with the same ownership to the east.

Additionally, in accordance with the process set forth in Merced Municipal Code Section 20.44.170(L) (7), Harvest of Merced submitted a request for minor modification to their pending application for a Commercial Cannabis Business Permit (Attachment 7) reflecting the Lot Line Adjustment. The submittal includes a new site plan (Attachment 8), updates to the parking plan and trash enclosure, and a map showing that the distance between the modified 863 W. 15th Street and the Wolfe Education Center is greater than 1,000 feet. Director of Development Services McBride approved the minor modification request and staff gave Provisional Zoning Clearance based on these submittals.

At the Planning Commission meeting of June 5, 2019, a public hearing was held and the Planning Commission voted to approve Commercial Cannabis Business Permit by a vote of 5-0 with one abstention, as shown in Resolution #4021 (Attachment 9). Jiva Life, LLC. has appealed the Planning Commission's approval, and has submitted a letter to that effect (Attachment 10). Harvest of Merced has also submitted a reply to the appeal (Attachment 11).

Environmental Review #18-27 (Categorical Exemption), shown at Attachment 12, was approved at the September 19, 2018, meeting of the Planning Commission. This Environmental Review was not appealed at the City Council's October 25, 2018, meeting nor at their December 3, 2018, meeting. Therefore, no further environmental review pursuant to the California Environmental Quality Act is necessary.

City Council Action

The City Council, after conducting a public hearing, should consider one of three options as outlined in the "Recommendation" section above. Information regarding Harvest of Merced's Commercial Cannabis Business Permit application is provided below.

Project Description

The applicants (Harvest of Merced) are proposing to operate a cannabis dispensary business for medicinal and adult-use cannabis and cannabis-related products at 863 W. 15th Street. This application includes delivery services. Background checks on all owners have been performed to the satisfaction of the Chief of Police. The proposed project complies with the General Plan designation of General Commercial (CG) and the zoning designation of General Commercial (C-G) with approval of a Commercial Cannabis Business Permit.

The City Selection Committee, made up of the City Manager, Chief of Police, and Director of Development Services, ranked this application #4 of all retail sales Dispensary applications, with an average score of 95.000. The full scoring sheet for this application is at Attachment 13.

The applicants propose the operation of a retail sales dispensary for both medicinal and adult-use cannabis and cannabis-related products, including delivery services. Approximately 444 square feet of the building is proposed as the sales area, with another 192 square feet for the lobby. These areas comprise the total of space that would be accessible by members of the public. The remainder of the

building is for “back-of-the-house” purposes such as storage and delivery.

As the project is proposed in an existing building with existing access to the City’s roadway infrastructure, and due to the conformity with the zoning for the site, no concerns related to traffic or circulation have been raised as a result of this project.

The site plan proposes 11 parking spaces adjacent to 863 W. 15th Street, with one (1) of those being an ADA-compliant space. The 1,800-square-foot building, using the general retail requirements for portions accessible to the public and the warehousing requirements for the portions inaccessible to the public, would require three spaces. The City’s Zoning Code requires one space per 300 square feet for general retail, using a 15% reduction in usable space for hallways and other “non-public” spaces, and one space per 2,000 square feet for warehousing. Therefore, the proposal meets and exceeds the City’s parking requirements.

The proposed property is surrounded by industrial and commercial uses to the west, north, and east. To the south of the property, across 15th Street, are single-family residences approximately 81 feet away from property line to property line. The project proposes significant upgrades to the property, including robust security; a building that has been vacant for some time represents a potential risk for illegal activities. The project would also improve the parking lot and improve the appearance of the building.

Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs including, but not limited to, banners and A-frames, nor window signs are allowed. The details of final elevations and signage shall be approved by Planning staff prior to issuance of a Certificate of Occupancy. Example renderings of the interior of the facility have been provided at Attachment 14; these are illustrative and final details will need to be approved by Building staff.

Safety/Security

The applicants’ security plan includes the following provisions:

- State-certified uniformed security officers during the hours of required coverage
- High visibility foot patrol at the serviced location
- Experienced field supervisors to oversee the operation of the assigned officers during the hours of required coverage
- Availability of a security consultant when necessary and/or desired by the client
- Office support for scheduling personnel and advisory needs
- Police liaisons for the serviced location(s) resulting from arrests or criminal incidents
- Carefully maintained incident reports, and other such documents or records as required by the client's individual needs
- Inventory reconciliation: scheduled daily, weekly, semi-annual, and annual reconciliation of inventory with increasing intensity
- An alarm system that will include:
 - Appropriate equipment, including a centrally monitored fire and burglar alarm system, necessary to monitor activity inside and outside the facility, including:
 - All entrances and exits
 - Rooms with exterior walls or walls shared with other building tenants

- Rooms containing cannabis and cannabis goods
 - The vault/Rooms containing the vault/The security room
 - Exterior windows
- A panic alarm, meaning a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress
- Automatic voice dialer
- Motion detection devices tied to the surveillance monitoring system
- Failure notification system that signals the alarm-monitoring provider of any system error within a maximum of five minutes
- A backup battery system that immediately provides power for at least twenty four (24) hours in the event of a power outage
- A back up alarm system that will detect unauthorized entry when no employees should be present at the Facility
 - The back up alarm system will be provided by a company supplying commercial grade equipment and not the same company supplying the primary security system. -
- Access Control equipment that will, at minimum, include:
 - Biometric fingerprint and/or RFID proximity card access control devices for all access points to the dispensary facility and doors entering or exiting a limited access area
 - Backup battery system that immediately provides power for at least twenty four (24) hours in the event of a power outage
 - Electric strike locks on all doors in the dispensary facility with the ability to override access control for emergency exit even during a power outage
 - System that allows for programming or uploading individual user permissions and allowed entry times, as well as operations specific information including employee photos
 - System that monitors and records identification of those entering and exiting, date/time, length of time in specific area and any unauthorized access attempts
- Video surveillance cameras that will:
 - Be immobile and in permanent locations
 - Record a minimum twenty (20) frames per second
 - Provide an image resolution of at least D1
 - Have a minimum resolution of 0.9 megapixels (1280 x 720 pixels)
 - Have infrared capabilities to capture images in low or no lighting conditions
 - Have the ability to identify activity occurring within 20' from all points of sale and from all points of ingress/egress to the facility and limited access area
 - Include a digital archiving device and 19"+ monitors connected to the electronic recording security system at all times

Ownership

Harvest of Merced, LLC. consists of owners who have at least 5% interest in the proposed business. The owners are Steve White (83%), Elizabeth Stavola (5%), Edgar Contreras (5%), and Anna Blazeovich (5%), who have each performed a Live Scan check and have successfully passed a background check to the satisfaction of the Chief of Police. The remaining 2% of ownership is held by

a Mr. Brian Vicente. This amount of ownership does not classify Mr. Vicente as an “owner” by the standards defined in City of Merced Ordinance #2480 and thus no background check has been performed on him.

According to the application, the owners have the following relevant experience and qualifications:

Mr. Steve White founded Harvest in 2012. Beginning with a single dispensary in Tempe, Arizona, Harvest presently holds 26 licenses in seven states, with operating facilities in four of those states (Harvest’s first Pennsylvania dispensary and Ohio cultivation facility are currently under construction and will be operational in 2018). In addition to overseeing medical cannabis license acquisition, facility start-up and operations, and providing guidance on organizational direction and strategy, Mr. White has also been instrumental in navigating state and county level regulatory audits, including, to date, 10 county building safety certificate of occupancy inspections, five county health department inspections, 16 state department of health services inspections, four Americans for Safe Access Patient Focused Certifications, and 14 certified financial audits.

Harvest facilities host monthly support group meetings for individuals suffering from epilepsy, chronic pain, cancer, and PTSD. Under Mr. White’s direction, Harvest has also engaged in a number of community activities and events, including the donation of over \$400,000 to local charitable organizations, veterans, seniors, and patients in need. Mr. White also serves on the board of directors for Harvesting Hope, a 501(c)(3) non-profit organization dedicated to improving quality of life for young children suffering from seizure disorders. To date, Harvesting Hope has raised and distributed nearly \$30,000 and provided services for over one hundred (100) families and their children.

Ms. Beth Stavola is a female entrepreneur, Chief Operating Officer and Board Member of MPX Bioceutical Corporation, the Founder and CEO of Stavola Medical Marijuana Holdings, Health for Life Inc, GreenMart of Nevada, and CBD For Life. In 2017, Cannabis Business Executive named Ms. Stavola #3 on the “CBE 75 Most Important Women” in cannabis list. She runs a thriving cannabis business, which includes growing, processing, and dispensing operations throughout Arizona, Nevada, Maryland, and Massachusetts.

The current overall operation consists of two Dispensary licenses, two Production licenses, and four Cultivation licenses in the state of Arizona operated under the Health for Life brand; as well as three medical marijuana licenses in Las Vegas, Nevada under the GreenMart of Nevada brand. In the last year the company has expanded to Maryland managing three dispensary licenses under the Health for Life brand and one production license under MPX, as well to Massachusetts with a fully integrated grow, production, and dispensary license. Her beauty and wellness brand, CBD For Life, provides customers with the benefits of cannabinoids while avoiding unwanted psychoactive effects and can be sold throughout the country.

Ms. Stavola has successfully established the Health for Life brand from inception to significant sales/cash flow within 5 years’ time and maintains one of the most stellar compliance records in the state of Arizona, receiving a 100% score on the last several state compliance audits. Given this record, Ms. Stavola was able to establish a banking relationship for the business, which is not an easy feat in this industry. Health for Life is one of the most recognized brands of cannabis dispensary, cultivation, and processors in Arizona. Ms. Stavola is also the owner of Melting Point Extracts (MPX), which has become an extremely well-respected and sought after brand in Arizona.

Ms. Anna Blazeovich has eleven years of prior experience in operating a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law with proof of payment of taxes. Ms. Blazeovich successfully founded and continues to run Therapeutic Health Collective (DBA Stone Age Farmacy). Therapeutic Health Collective is a verified Mutual Benefit Non-Profit Corporation for cannabis that operates in compliance with California law and has proof of payment of taxes. In 2017, for example, the Collective paid the City of Los Angeles \$52,648 in taxes. Therapeutic Health Collective has created 35 jobs in Gardena, California. While the brand began as a verified Mutual Benefit Non-Profit Corporation, it has blossomed into three stores serving both medical patients and recreation customers in two different states.

As a licensed dispensary owner in California and Oregon, Ms. Blazeovich has a decade of experience in regulatory cannabis compliance. The Collective is vertically integrated, meaning it grows the cannabis products it sells. This capability translates into improved pricing for patients and customers while retaining maximum quality. Additionally, being vertically integrated allows for more control throughout the supply chain, which further supports a professional product selection and shelf stock for the consumer. This business resiliency and impeccable compliance standards will be transferred to the Harvest dispensary.

Mr. Edgar Contreras, a native of Merced, California, has extensive managerial experience with local Merced retail businesses, totaling over three years. He will also serve as the dispensary's Neighborhood Liaison. Mr. Contreras graduated from Merced High School in 1995. After graduating, Mr. Contreras began working at Sweet River Saloon as a dishwasher. Through personal drive and ambition, he was promoted to kitchen manager within a year, managing a staff of twenty people for over four years, where he was responsible for a myriad of supervision duties, including staff scheduling, inventory tracking, and quality control. Mr. Contreras subsequently served as manager of a Dollar Tree retail store, where he was responsible for shipping and receiving goods, customer service, staff scheduling, inventory tracking, and product stocking, all while managing eleven staff members for over two years. He successfully streamlined services to make the business more profitable, resilient, and customer focused.

A passionate advocate for the City of Merced, Mr. Contreras remains an active member of the local community. Mr. Contreras volunteers his time as a high school coach for basketball, football, baseball, and soccer at El Capitan High School. He has a special affinity for mentoring students. He regularly encourages young athletes to believe in their potential, give back to the community, and avoid destructive habits like substance abuse. He will play an integral role in Harvest's drug prevention for youth program.

Community Benefits

The Harvest of Merced, LLC. application indicates the following benefits to the community should their application be approved:

- Commitment to set aside at least three percent of yearly net profits for monetary contributions to local charitable organizations.
- Merced County Food Bank- At least \$10,000 per year
- United Way of Merced County- At least \$10,000 per year
- Boys & Girls Club of Merced County- At least \$2,500 per year

- Challenged Family Resource Center and Golden Valley Health Center- At least \$2,500 per year
- Pledged to chaperone the Challenged Family Resource Center's annual formal dance for developmentally disabled children.
- Harvest plans to host free bicycle and wheelchair repair clinics in the spring, summer, and fall months. Harvest will set up temporary wheelchair and bike stands where Harvest employees can perform free tune-ups and replace simple bicycle parts such as tires, tubes, chains, and brake cables. Harvest will operate these services by receiving donations and purchasing parts at-cost from participating local suppliers. Harvest will also have a volunteer sign up document for employees and consumers to commit to help at the clinics. Harvest consumers may volunteer their time making repairs at our temporary wheel and bike stands, which will count toward Harvest's Consumer Volunteer Discount initiative.
- Customer Volunteer Discount initiative in order to encourage Harvest consumers to give back to their local Merced community. This program will offer a range of discounts on final purchases of cannabis goods to patients and consumers who regularly volunteer at local charitable organizations. Harvest will create a simple form that customers and patients may pick up from the retail facility that will track their volunteer time and include a place for the charitable organization's supervisor to confirm any completed volunteer hours. For the discount, Harvest consumers are not required to complete all of their volunteer hours at one charitable organization. For every five volunteer hours Harvest customers complete and record, the customer will receive a 10% discount on their next two purchases. If a Harvest customer completes ten or more volunteer hours in a month, the Harvest customer will receive a 20% discount on all purchases made for the rest of the month in which the hours were completed. Harvest will never give away cannabis or cannabis goods for free.
- Harvest will offer a 20% discount on final purchases to any customers with a veteran designation as part of our Merced facility's initiative to Heal Our Heroes. As part of this program, Harvest will help customers understand the potential benefits and effects of using cannabis to treat wounds of war like Post Traumatic Stress Disorder (PTSD) and Chronic Traumatic Encephalopathy (CTE). To promote Healing Our Heroes and support California veterans, Harvest will advertise this initiative with local chapters of the American Legion, Veterans of Foreign Wars (VFW), Disabled American Veterans Charity, California National Guard Association, and other active veteran service organizations.
- Harvest's Merced facility will implement the Merced Cares initiative, offering a 20% discount on final purchases to medical patients who are low income. To qualify for the Merced Cares program, patients will be asked to show proof of eligibility in either CalFresh, Medi-Cal, or other comparable qualified assistance program. The State of California recognizes that medical cannabis can provide relief that is, unfortunately, not covered by health insurance as medical cannabis falls outside the traditional healthcare system. This leaves many low-income families scrambling to pay for medicine and pain relief that can alleviate their or a loved one's suffering. Harvest believes no patient or family should be denied access to medicine simply because they cannot afford it.
- Harvest wants the citizens of Merced to know that the unlawful use of cannabis has severe consequences. Although recreational cannabis is legal in the State of California, there are still current penalties for recreational use under the age of twenty-one and medical use without a prescription. To bring awareness of the penalties for unlawful use of cannabis, Harvest would like to partner with the City of Merced Police Department and the Merced County Sheriff's Department to hold community discussions. Harvest would also like to invite local elected

- officials to participate and let the local police departments set the agenda.
- During these community discussions, Harvest will solicit feedback from the community. Community feedback is essential to understanding the best way to reach our neighbors. There is a lot of misinformation about the use of cannabis and the consequences of unlawful use. Harvest will promote these community discussions through traditional media and social media. In order to drive attendance to these important events, Harvest will encourage the City of Merced Police Department, the Merced County Sheriff's Department, and local elected officials to promote the community discussions.
- Harvest hopes to hold these community discussions at a school, so that the youth can have access to this important information. Harvest is prepared and working to facilitate and sponsor that event. These events would be incredibly productive because social media makes students especially vulnerable to misinformation about cannabis and drug use.

Modification to Operations

Ordinance #2498 sets forth the process in the City's Municipal Code by which a permitted cannabis business may amend aspects of its operations as pertains to the Commercial Cannabis Business License. Section 20.44.170(L)(7) of the Municipal Code lays out the details of this process. Harvest of Merced submitted an application in accordance with these regulations to modify the site plan in accordance with the Lot Line Adjustment submitted by the property owner (see "History" above for more details).

Environmental Clearance

Environmental Review #18-27 (see Attachment 11) was performed in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) was approved as a result of the September 19, 2018, meeting of the Planning Commission, which was not appealed at the October 25, 2018, meeting of the City Council nor at any other public meeting held by the City of Merced. Therefore, no further action on the Environmental Review is required.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. Location Map
2. Aerial Map
3. Floor Plan
4. Photographs of Subject Site
5. City of Merced Official List of Schools
6. Ordinance #2498
7. Harvest of Merced Request for Modification of Application
8. Updated Site Plan
9. Planning Commission Resolution #4021 Approving CCBP #18-14R
10. Jiva Life, LLC's Appeal of Planning Commission Approval of CCBP #18-14R

11. Harvest of Merced, LLC's reply to Appeal by Jiva Life of CCBP #18-14R
12. Environmental Review #18-27
13. Merit-Based Scoring Sheet
14. Renderings of Example Buildout
15. Resolution 2019-__ Affirming the Planning Commission's approval of CCBP #18-14R
16. Resolution 2019-__ Reversing the Planning Commission's approval of CCBP #18-14R
17. Staff Presentation