

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

**STAFF REPORT:** #18-30

**AGENDA ITEM:** 4.1

**FROM:** Kim Espinosa,  
Planning Manager

**PLANNING COMMISSION**  
**MEETING DATE: November 14,**  
**2018**

**PREPARED BY:** Michael Hren, AICP  
Principal Planner

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**SUBJECT:** **Commercial Cannabis Business Permit #18-14R**, initiated by Harvest of Merced, LLC., on a property owned by Stephen G. Tinetti, trustee. This application is a request to permit the operation of a Retail Dispensary, including delivery services, for both medicinal and adult use cannabis and cannabis-related products on a 0.36 acre parcel in the General Commercial (C-G) Zone at 863 W. 15th St. \*PUBLIC HEARING\*

- ACTION:**
1. 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. is within 1,000 feet of a school.
  2. Approve/Disapprove/Modify Commercial Cannabis Business Permit (CCBP) #18-14R

**SUMMARY**

This application is 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. The project proposes to use and modify an existing building, which has existing access to utilities.

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 (Attachment R). 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. Environmental Review #18-27 (Categorical Exemption) was approved at the September 19, 2018, meeting of the Planning Commission, and the Environmental Review was not appealed at the City Council’s October 25, 2018 meeting; thus, no further environmental review pursuant to the California Environmental Quality Act is necessary.

## **RECOMMENDATION**

- If the Planning Commission finds that 863 W. 15<sup>th</sup> St. is within 1,000 feet of a school, the Planning Commission should make the following finding and deny Commercial Cannabis Business Permit #18-14R (including the adoption of the Resolution at Attachment U):
  - 1) Based on the evidence on the record, both in the staff report and from the public testimony on November 14, 2018, the Planning Commission finds that 863 W. 15<sup>th</sup> St. is within 1,000 feet of a school, as defined in MMC 20.44.170(C).47.

OR

- If the Planning Commission finds that 863 W. 15<sup>th</sup> St. is not within 1,000 feet of a school, the Planning Commission should make the following finding and approve Commercial Cannabis Business Permit #18-14R (including the adoption of the Resolution at Attachment V):
  - 1) Based on the evidence on the record, both in the staff report and from the public testimony on November 14, 2018, the Planning Commission finds that 863 W. 15<sup>th</sup> St. is not within 1,000 feet of a school, as defined in MMC 20.44.170(C).47.

Staff recommends the approval be subject to the following conditions (these conditions, except for Condition #13, are the same as adopted by the Planning Commission in its previous action on September 19, 2018, now reversed by City Council decision):

- \*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Attachment C, and Exhibit 2 (floor plan), Attachment D, except as modified by the conditions.
- \*2) All conditions and requirements contained in Merced Municipal Code (MMC) Section 20.44.170/Ordinance #2480 (Attachment H) shall apply. Particular attention shall be paid to MMC 20.44.170(F) “Additional Regulations for Dispensary and Retail Sales of Cannabis” and MMC 20.44.170(G) “Additional Regulations for Commercial Cannabis Delivery Services.”
- \*3) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- \*4) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- \*5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits,



- proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- \*6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control. State Law shall prevail in regards to cannabis activities as permitted by State Law.
  - \*7) The proposed project shall comply with all applicable regulations of the State of California including, but not limited to, those found in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).
  - \*8) The applicants shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment I) at the time of submittal for building permits for tenant improvement.
  - \*9) The details of the property's fencing (if any), security, and screening are to meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
  - \*10) The applicants shall keep on the premises of the proposed project site a physical copy of the approved plans, to be annotated and updated accordingly with any notes, changes, or requirements determined to be necessary by representatives of the City of Merced or any contractors that the City of Merced may employ for the purpose of site inspections. These plans shall be made available to the City's representatives, employees, agents, inspectors, or contractors upon request.
  - \*11) Fire sprinklers shall be modified or installed to accommodate the building configuration and process configuration prior to occupancy if required by the Chief Building Official.
  - \*12) Regulatory Fees, as per Resolution #2017-67, are to be paid prior to the issuance of a Certificate of Occupancy and annually thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually (starting on January 1, 2019) to account for inflation by using the Consumer Price Index (CPI). In no event, shall the fees in any year be less than the preceding year.
  - \*13) A Commercial Cannabis Business Permit is valid for one year or until December 31 of each year, unless sooner revoked. Applications for the renewal of a permit shall be filed with the Director of Development Services, in accordance with 20.44.170(L).4, "Commercial Cannabis Business Permit Renewal (All Types)", at least sixty (60) calendar days before the expiration of the current permit. If the permittee allows their permit to lapse, they shall be required to submit a new application, pay corresponding fees and be subject to all aspects of the selection process. Because of the lateness in the year of the

Public Hearing for this permit, the permit shall be valid until December 31, 2019.

- \*14) As per Ordinance #2480, the use of vending machines to dispense cannabis is strictly prohibited. Any vending machines on the property must not contain cannabis or cannabis-based products.
- \*15) The applicants shall provide or cause to be provided a trash enclosure on the property such that all waste is securely stored until it is removed from the premises. Access to this enclosure shall be provided to the City's Department of Public Works.
- \*16) Key access and/or a Knox Box to the perimeter fence shall be provided to the City of Merced Fire Department, Department of Public Works, and Police Department.
- \*17) As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$100,000. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State standards and regulations.
- \*18) The parking lot shall be repaved and restriped in compliance with the City of Merced's City Standard Designs.
- \*19) If the applicants are unable to provide a FEMA flood elevation certificate showing that the top of the bottom floor and all equipment are at the required height as to not mandate mitigation measures if applicable, flood mitigation measures shall be required to meet the approval of the City flood plain manager and City Engineer.
- 20) There shall be no shared access to the building sharing a common wall with 863 W. 15th Street. Any existing shared access point must be sealed prior to the issuance of a Certificate of Occupancy.
- 21) The details of the final design of the exterior elevations and any signage shall be approved by Planning staff prior to issuance of a Certificate of Occupancy.
- 22) Future modifications to the scale, scope, activities, implementation, processes, materials, design, layout, or other factors pertaining to the operation of the project that are consistent with permits to perform activities related to operation of a retail dispensary of cannabis and cannabis-based products may be authorized with the approval of the City's Chief Building Official, Fire Chief, and Director of Development Services.

(\*) Denotes non-discretionary conditions.

**PROJECT DESCRIPTION**

The applicants 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.

**Surrounding Uses**

<b>Surrounding Land</b>	<b>Existing Use of Land</b>	<b>City Zoning Designation</b>	<b>City General Plan Land Use Designation</b>
North	Carwash (across railroad tracks, under construction)	General Commercial (C-G)	General Commercial (CG)
South	Single-Family Residential (across W. 15 <sup>th</sup> St.)	Planned Development #14 (P-D 14)	General Commercial (CG)
East	Warehouses	General Commercial (C-G)	General Commercial (CG)
West	Warehouses	General Commercial (C-G)	General Commercial (CG)

**BACKGROUND**

This application has passed Phase I screening and the applicants have paid the fee for Phase II. Background checks on all owners have been performed to the satisfaction of the Chief of Police.

**FINDINGS/CONSIDERATIONS:****Wolfe Educational Center**

- A) The properties located at 732 W. 13th Street (APN 031-313-012) and 760 W. 13th Street (APN 031-313-013) are commonly known as the Wolfe Educational Center, which is owned and operated by the Merced County Office of Education (MCOE). The Planning Commission is charged with the task of determining whether either one or both of these properties meet the definition of “school” per City of Merced Ordinance #2480 and whether the property located at 863 W. 15th St. is within 1,000 feet of a school.

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).”

Ordinance #2480 also states that: “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. 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. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.”

At present, the City's online mapping tool shows 732 W. 13<sup>th</sup> St. (hereafter, "the Larger Parcel") as a school, necessitating a 1,000 foot buffer around it in which cannabis uses are not permitted. City staff reached out to MCOE prior to the receipt of commercial cannabis business permit applications to clarify the activities on MCOE properties. City staff were told in a phone conversation with MCOE staff that the Larger Parcel was where student activity, particularly that of minors, was occurring. MCOE staff was not presented at that time with the formal definition of "school" from Ordinance #2480. Based on the information provided by MCOE, City staff interpreted that the Larger Parcel qualified as a "school". The Larger Parcel is more than 1,000 feet from 863 W. 15<sup>th</sup> St. (hereafter, "the Subject Parcel"), both according to the City's online mapping tool and confirmed by a survey performed by the City Surveyor (Attachment Q).

The City's online mapping tool does not presently show 760 W. 13<sup>th</sup> St. (hereafter, "the Smaller Parcel") as a school. The conversation between MCOE and City staff did not include any information to indicate that school activities were occurring on the Smaller Parcel. The Smaller Parcel is less than 1,000 feet from the Subject Parcel, both according to the City's online mapping tool and confirmed by a survey performed by the City Surveyor (Attachment Q).

#### **Clarification of Activities from MCOE**

After receipt of the Appeal to Commercial Cannabis Business Permit #18-14R, City staff performed further research into the Wolfe Educational Center. After meeting with MCOE staff on the site itself to discuss the activities occurring there, City staff confirmed these activities with an email conversation. The document at Attachment L shows the various activities by room number. Rooms W-12 and W-13 are on the Smaller Parcel and other rooms are on the Larger Parcel.

Listed in the activities at the Wolfe Educational Center are adult training programs, training and employment programs for 18 to 24-year-olds, a computer lab, office uses, specialized trainings for foster youth, and special education services for 18 to 22-year-olds. Instruction in kindergarten through 12<sup>th</sup> grade does not appear as a use of these rooms, though these programs do serve the K-12 population in some cases.

#### **Physical Features**

The Wolfe Educational Center uses buildings on both parcels for its activities. A connecting feature covers the divide between the buildings of the two parcels, and the architectural details of those buildings are similar, though not identical. The sidewalk in front of the buildings allows travel between the two parcels. Photographs of the Wolfe Educational Center are provided at Attachment M.

#### **City Documents**

In 1997, MCOE applied for and received a Conditional Use Permit (CUP) for the Larger Parcel to allow a Regional Occupational Program educational campus consisting of five relocatable buildings (Attachment N). The Smaller Parcel was not included in this CUP, as it was not owned by MCOE until 2002. The City has no records of the Smaller Parcel ever being added to the existing CUP, nor any application for a separate CUP for the Smaller Parcel, nor any lot merger between the Smaller Parcel and the Larger Parcel.

The City's General Plan shows the Wolfe Educational Center as High to Medium Density Residential use. It is not shown as School, Future School, or Public/General Use. While the School category does not show private schools, which are included in the definition of "school" per Ordinance #2480, a school operated by MCOE would not likely qualify as a private school.

### **Additional Research**

Visiting the MCOE website (<https://www.mcoe.org/school/Pages/mcoe.aspx>), the list of MCOE schools does not include the Wolfe Educational Center (Attachment O).

Searching the California Department of Education website for all districts and schools finds no mention of the Wolfe Educational Center (<https://www.cde.ca.gov/SchoolDirectory/>) (Attachment P).

### **Submittal from Other Parties**

As of the writing of this Report, staff has received additional materials from two parties:

- Harvest of Merced, LLC, the applicant (Attachment S)
- Medallion Wellness, the leader of the opposition (Attachment T)

### **General Plan/Zoning Compliance**

- B) 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.

### **Land Use Issues**

- C) 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 #2480 for retail cannabis businesses (Attachment H). As regards the Wolfe Educational Center, this issue is discussed in more detail in Finding A, above.

### **Merit-Based Scoring**

- D) 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 F.

### **Proposed Operations**

- E) 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.

### **Traffic/Circulation**

- F) 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.

### **Parking**

- G) The site plan proposes 17 parking spaces adjacent to 863 W. 15th Street, with four of those being ADA-compliant spaces. 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.

### **Neighborhood Impact/Interface**

- H) The proposed property is surrounded by industrial and commercial uses to the west, north, and east. To the south of the property, across 15<sup>th</sup> 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.

Staff believes that the project will enhance the neighborhood, particularly as it relates to safety and security. Planning staff circulated a public hearing notice in the Merced County Times and mailed the notice to property owners within 300 feet of the subject site at least ten days prior to this public hearing. As of the date that this report was prepared, staff had not received any comments from the community about this project.

### **Elevations/Signage**

- I) 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 (Condition #21). Example renderings of the interior of the facility have been provided at Attachment E; these are illustrative and final details will need to be approved by Building staff.

### **Safety/Security**

- J) 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
    - Rooms containing the vault
    - 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 employees or visitors entering and exiting, the date and time of entry and exit, 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 twenty feet (20') from all points of ingress/egress to the facility, points of ingress/egress to limited access area, and all points of sale
  - Include a digital archiving device and monitors that will each be at least nineteen (19) inches or greater that will be connected to the electronic recording security system at all times

### **Ownership**

- K) 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 Blazevich (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. Mr. Contreras will play an integral role in Harvest's drug prevention for youth program.

### **Community Benefits**

- L) 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.
  - 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 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.
- 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**

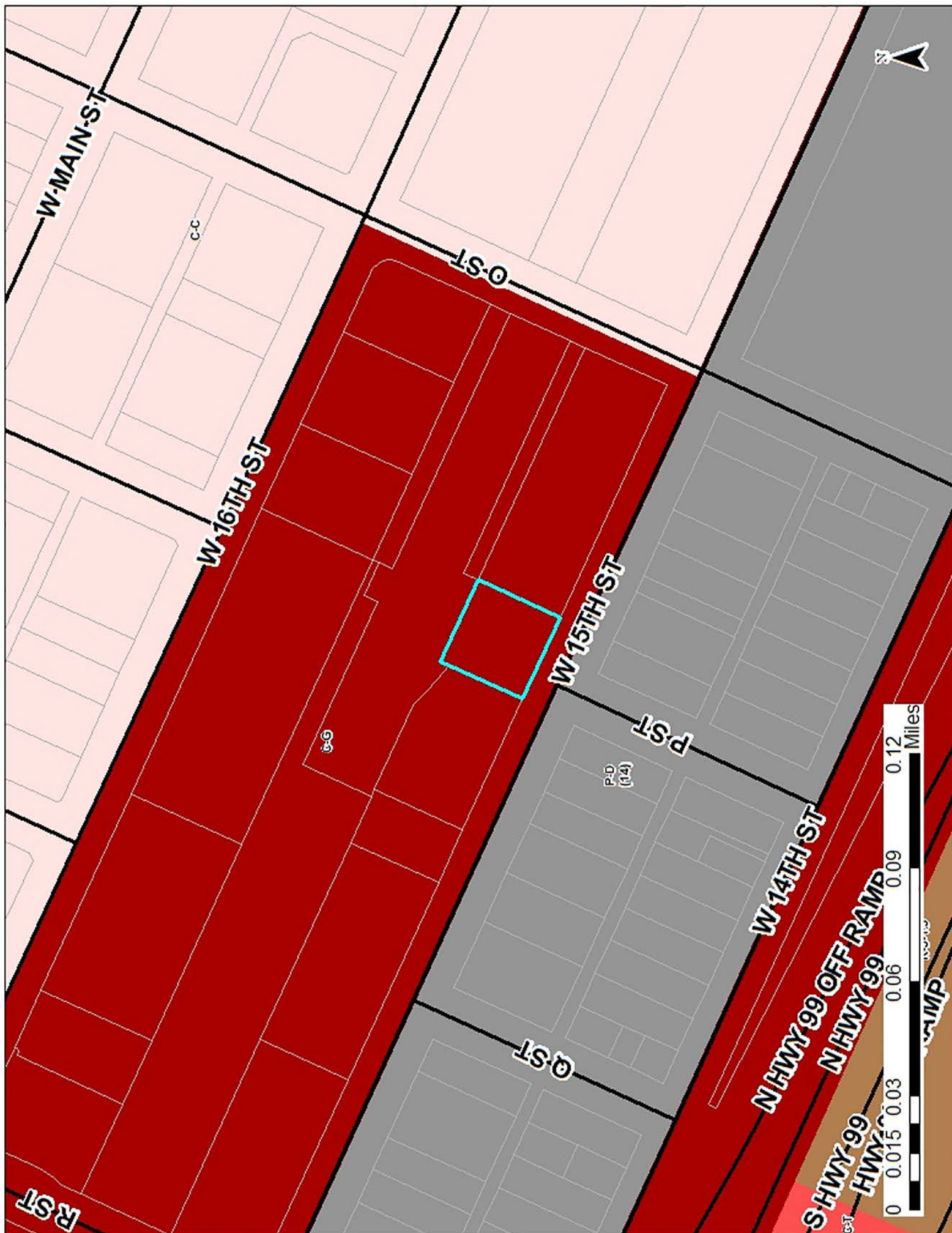
- M) The City of Merced recognizes that the details of operating a business, particularly one in a developing sector such as cannabis and cannabis-based products, requires continual updating of business practices, methodologies, and tools, the modification of which may require alterations to the configuration of the equipment, setup, or layout of the facility. In order to allow for these changes while maintaining the safety of all parties involved, modifications to the permit in the course of retail sales of cannabis and cannabis-related products may be requested by the applicants and approved with the consent of the City's Chief Building Official, Fire Chief, Police Chief and Director of Development Services (Condition #22).

**Environmental Clearance**

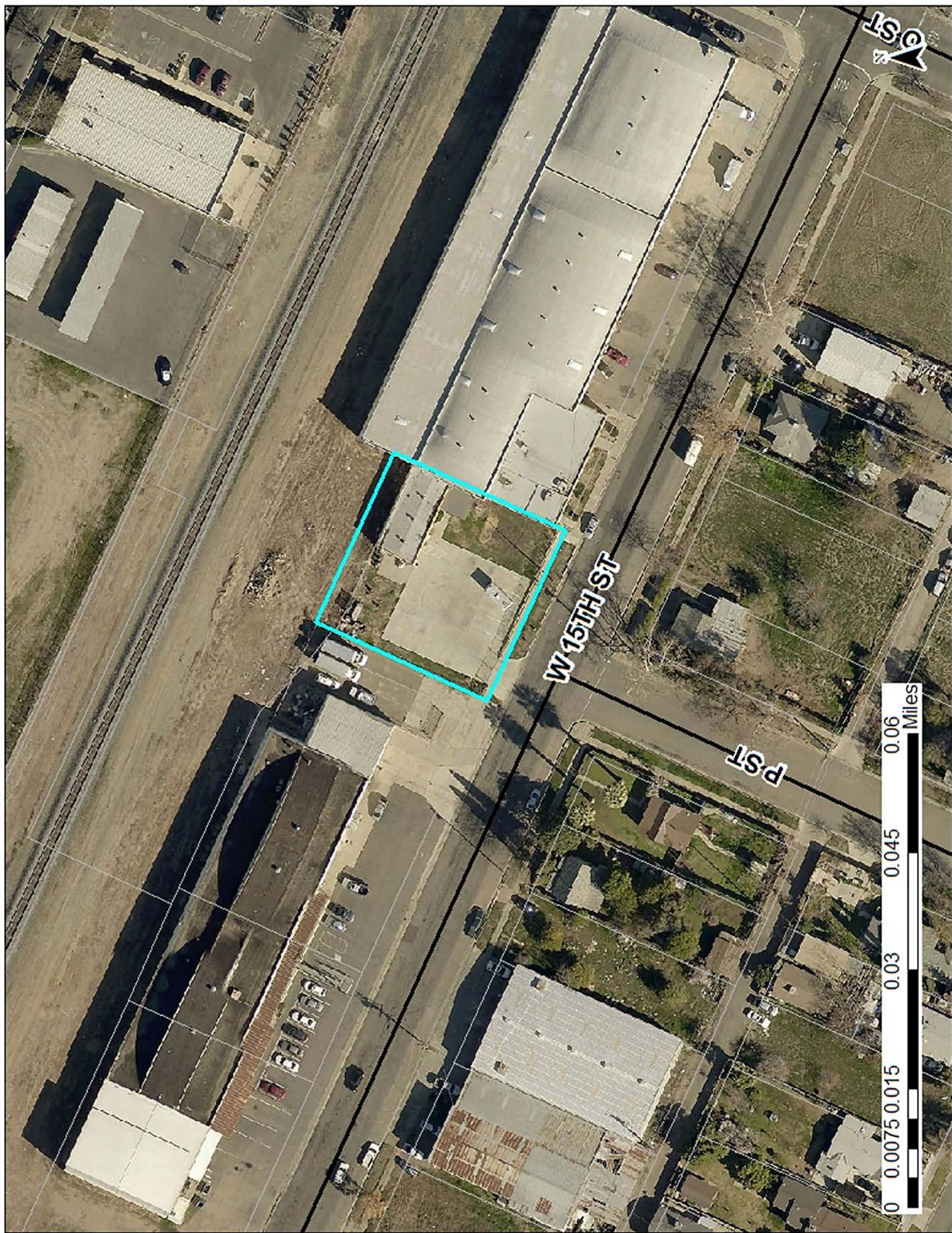
- N) Environmental Review #18-27 (see Attachment J) was performed in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) was approved as a result of the September 19, 2018, meeting of the Planning Commission, which was not appealed at the October 25, 2018, meeting of the City Council.

**Attachments:**

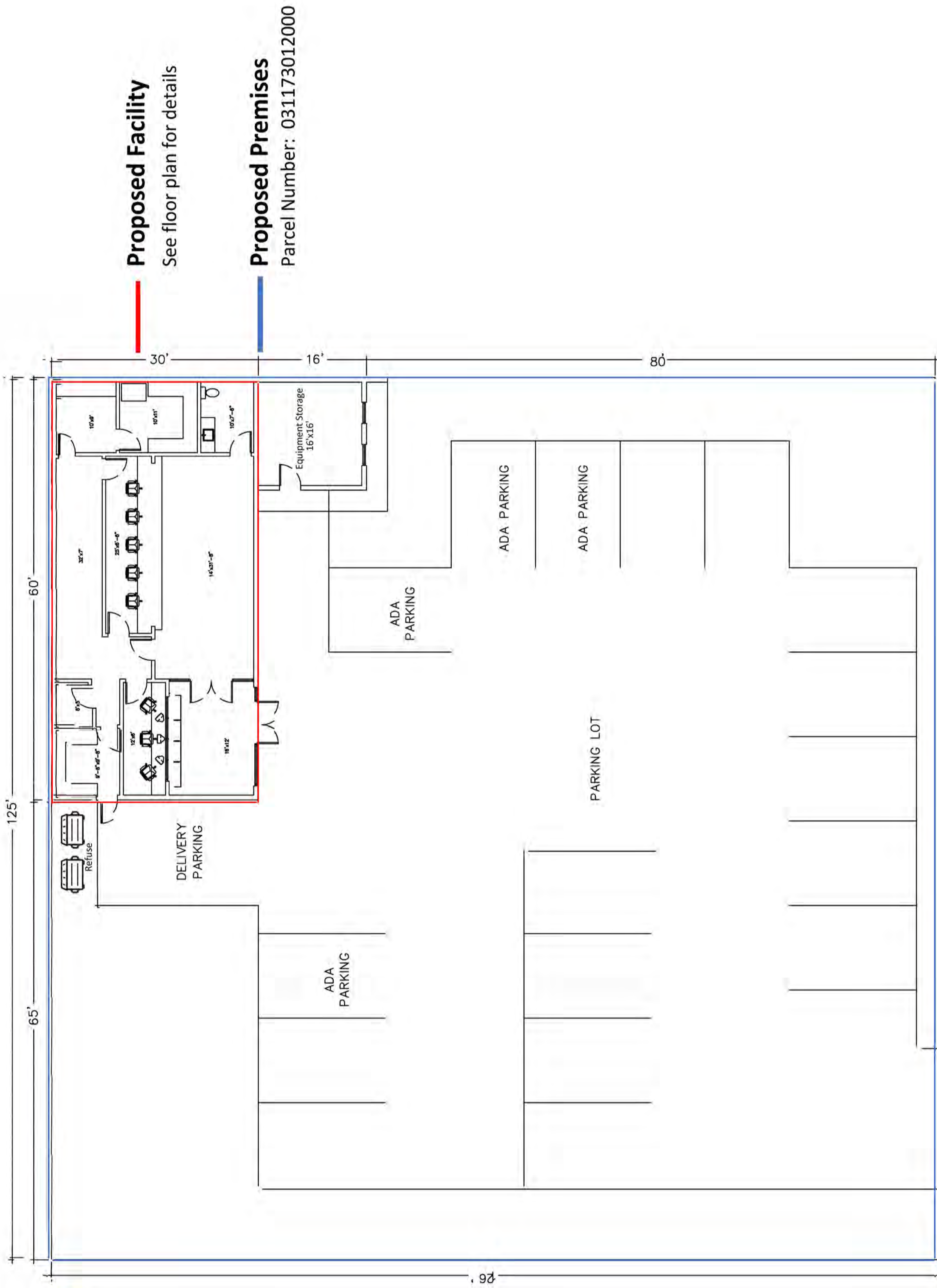
- A) Location Map
- B) Aerial Map
- C) Site Plan
- D) Floor Plan
- E) Renderings of Example Buildout
- F) Merit-Based Scoring Sheet
- G) Photographs of Subject Site
- H) Ordinance #2480
- I) City of Merced Commercial Building Permit Application Submittal Requirements
- J) Environmental Review #18-27
- K) Sensitive Use Maps from Online Cannabis Mapping Tool
- L) Table Explaining Wolfe Center Activities from Daphne Post, MCOE Coordinator
- M) Photographs of Wolfe Educational Center
- N) Staff Report #97-20 and Planning Commission Resolution #2417
- O) School Listing from MCOE Website
- P) California Department of Education Search Results
- Q) Survey Performed by City Surveyor
- R) City Council Resolution #2018-71
- S) Submittal from Harvest of Merced, LLC. (applicant)
- T) Submittal from Medallion Wellness (leader of the opposition)
- U) Draft Planning Commission Resolution Denying CCBP #18-14R
- V) Draft Planning Commission Resolution Approving CCBP #18-14R











**Proposed Facility**  
See floor plan for details

**Proposed Premises**  
Parcel Number: 031173012000

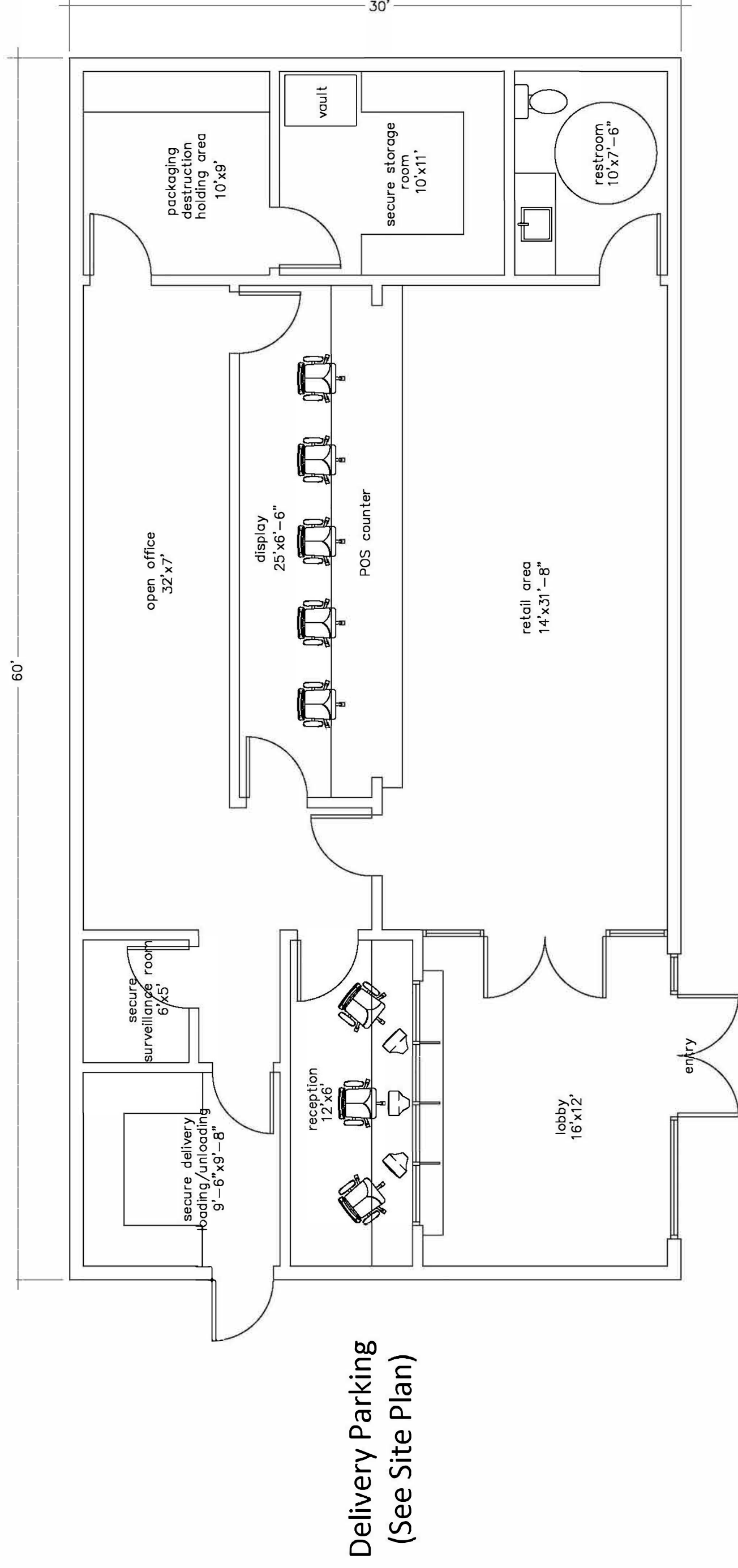
**SITE PLAN**  
SCALE: 3/32"=1'-0"

863 W. 15th STREET





# Harvest of Merced Floor Plan



FLOOR PLAN  
SCALE: 3/16"=1'-0"

863 W 15th Street  
Merced, CA 95340  
Parcel Number: 031173012000

## NON-LIMITED ACCESS AREAS

### LOBBY

The lobby will be the sole entrance to the dispensary facility that will be accessible to persons who are not authorized employees of Harvest. In this lobby consumers, visitors, contractors, and members of the Bureau, law enforcement, or other relevant state and local authorities will check-in with the Security Guard on duty before being granted access to any other area of the dispensary facility. Identification for all visitors will be checked to ensure that only qualified individuals are allowed access to the separate, locked retail area where cannabis products are displayed and sold.



*Example of fully constructed Harvest Lobby Area*

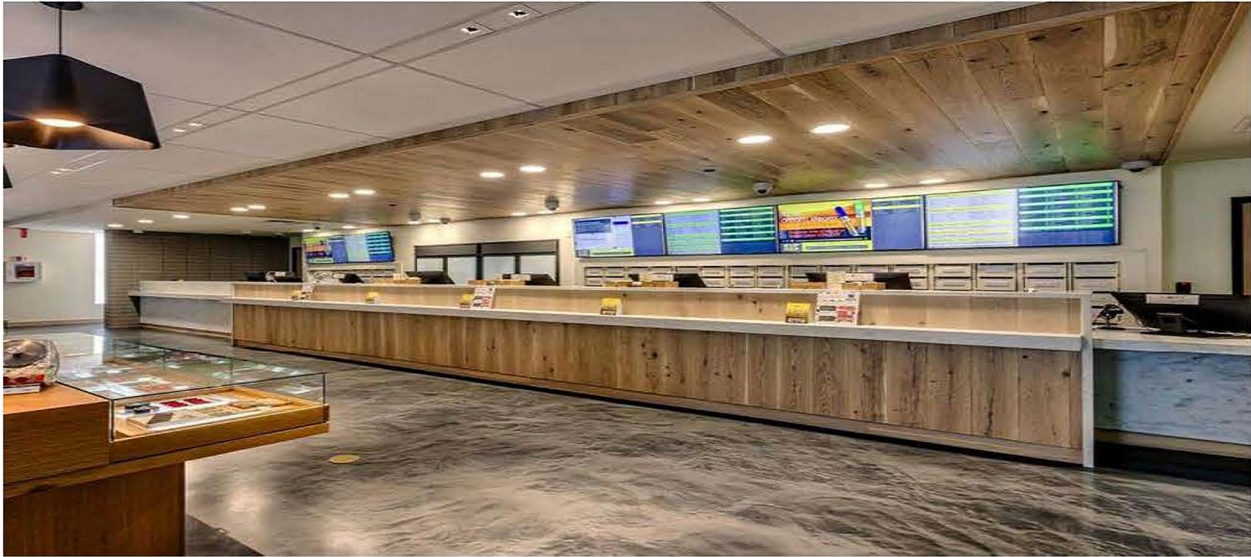
Patrons will only be granted access to the retail area after Harvest has verified that the consumer is at least twenty-one (21) years of age and has a valid proof of identification or that the individual is at least eighteen (18) years of age, has valid proof of identification, and a valid physician's recommendation for themselves or for a person for whom they are a primary caregiver. Valid proof of identification will clearly indicate the age or birthdate of the consumer or caregiver, as described in the Security section of this application. Individuals will not be permitted to remain on the premises if they will not be engaging in express activity related to the operations of Harvest.

### RETAIL AREA

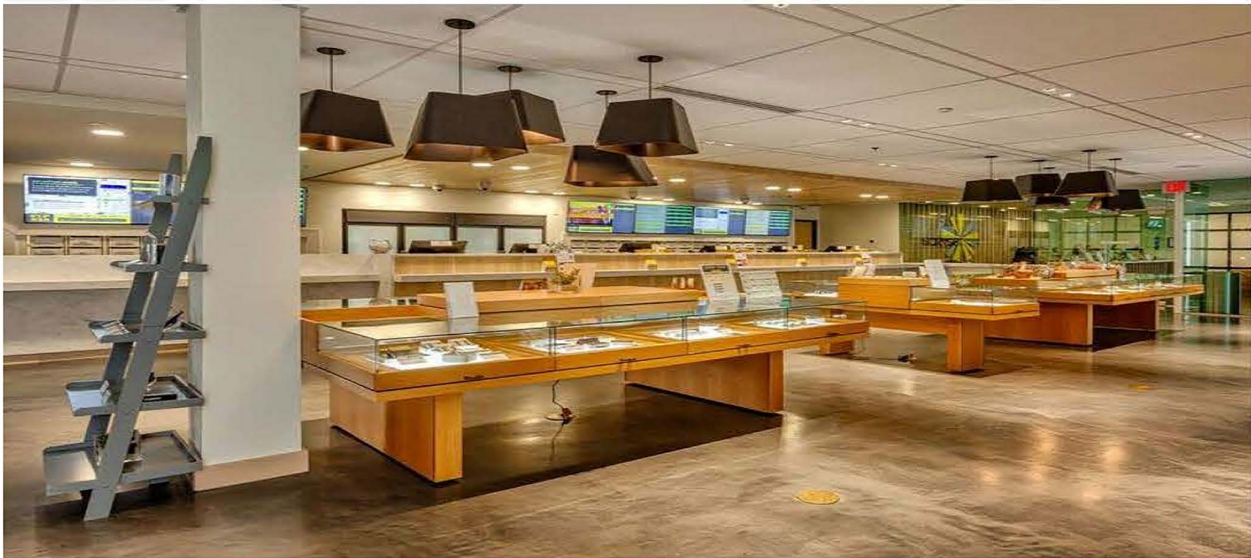
Cannabis and cannabis goods will be sold and displayed behind the sales counter in the Retail Area. This area will be accessible to employees, verified consumers, authorized representatives of the Bureau and other government officials, and authorized tradespeople when necessary to perform their job duties. At least one (1) Harvest Wellness Representative or other employee will be physically present in the retail area at all times when consumers or other authorized individuals are in the retail area. Our policy is to require at least one (1) Wellness



Representative for every two patrons in the Retail Area. After a patron purchases their cannabis goods, they will be required to immediately leave the retail area.



*Examples of fully constructed Harvest Retail Area*



## EQUIPMENT STORAGE AREA

The dispensary facility includes a 16 foot x 16 foot accessory building structure. This building will remain on the property and part of the premises and be used for the storage of equipment, utensils, and cleaning supplies. Under no circumstances will cannabis be stored or possessed in the equipment storage area.

**City of Merced**  
**Merit Based Selection Criteria for Commercial Cannabis Business Permits**  
**Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th**

Selection Committee Scores				
<u>Description of Criteria:</u>	<u>Points Possible</u>	<u>Reviewer #1</u>	<u>Reviewer #2</u>	<u>Reviewer #3</u>
<b>Section 1: Prioritize Medicinal Cannabis Access</b>				
a) Proposal for combined medicinal/adult use dispensary	4	4	4	4
b) Proposal for medicinal only dispensary	3	0	0	0
c) Proposal for non-medicinal/adult use dispensary only	0	0	0	0
d) Proposal includes Delivery Services	2	2	2	2
<b>Section 1: Sub-Total of Points Possible</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>
<b>Section 2: Geographical Preference/Neighborhood Relations</b>				
a) Proposed locations is within 1,200 feet of local public transportation	1	1	1	1
b) Proposal includes a process and schedule for at least two public outreach meetings per year that meet City approval	2	2	2	2
c) Business plan includes a schedule for communication and receiving feedback from all entities within 300 feet of the business at least two times a year	2	2	2	2
d) Proposal includes the appointment of an employee as a designated liaison with the neighborhood	1	1	1	1
e) Designated liaison employee is a City resident	1	1	1	1
<b>Section 2: Sub-Total of Points Possible</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>7</b>
<b>Section 3: Facility Plan</b>				
a) Business is formally associated with a non-retail cannabis or non-cannabis-related business in the City of Merced	2	2	2	2
b) Proposal includes daily inspection to ensure maintenance of the interior and exterior of the facility (i.e. free of trash, graffiti, etc.)	2	2	2	2
c) Location exceeds City parking requirements by 10% or more	1	1	1	1
d) Business is open more than five days a week at least 6 hours per day	1	1	1	1
e) Location exceeds minimum disabled parking requirements by 100% or more	1	1	1	1
f) Location is within an existing building or facility with an ability to be open for business within 6 months of approval of the CCBP by the City	1	1	1	1
<b>Section 3: Sub-Total of Points Possible</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>

**City of Merced**  
**Merit Based Selection Criteria for Commercial Cannabis Business Permits**  
**Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th**

Selection Committee Scores				
<u>Description of Criteria:</u>	<u>Points Possible</u>	<u>Reviewer #1</u>	<u>Reviewer #2</u>	<u>Reviewer #3</u>
<b>Section 4: Standards and Procedures for the Safe Operation of Facilities:</b>				
a) Proposal includes documented employee safety training program	1	1	1	1
b) Proposal includes documented employee cannabis educational training program	1	1	1	1
c) Business Plan includes enhanced security measures, including at least three of the following: panic buttons, dye packets, bulletproof window film (with break strength of 400 lbs. per inch or better), a UL-approved safe with a fire rating that is 2-hour 1700 degrees F or better with a complex locking device; motion sensing lighting; or other enhanced security measures acceptable to the City. (0 to 4 points to be awarded at the discretion of the City Selection Committee.)	0 to 4	4	4	4
d) Proposal includes climate controlled environment	1	1	1	1
e) Proposal includes plan for disposal of all solid waste based on best practices of State	1	1	1	1
f) Proposal includes a comprehensive documented process for 24-hour minimum response time to cannabis product recall notifications	2	2	2	2
g) Proposal includes more than one on-site security guard during business hours	2	2	2	2
h) Proposal includes plans and procedures for how all cannabis products on the premises or held by the applicant have met the testing requirements as defined by the State	1	1	1	1
i) Proposal includes a separate lobby area where identification is checked to ensure that only qualified individuals gain access to separate, locked areas where cannabis products are displayed	2	2	2	2
j) Proposal includes electronic storage of required records of sales, delivery manifests, patient information (if medicinal and required by State), inventory, etc., which can be provided to City personnel upon request	2	2	2	2
k) Proposal includes participation in web-based public safety application or equivalent that provides law enforcement with confirmation of local and state licenses	1	1	1	1
l) Proposal includes any proposed "green" business practices relating to energy and climate, water conservation, and materials/waste storage	1	1	1	1
m) Proposal includes secured loading/unloading area for deliveries	1	1	1	1
<b>Section 4: Sub-Total of Points Possible</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>

**City of Merced**  
**Merit Based Selection Criteria for Commercial Cannabis Business Permits**  
**Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th**

Selection Committee Scores				
<u>Description of Criteria:</u>	<u>Points Possible</u>	<u>Reviewer #1</u>	<u>Reviewer #2</u>	<u>Reviewer #3</u>
<b>Section 5: Prior Experience in Business Ownership and Management</b>				
a) Combined prior experience of proposed owners is more than 3 years of verified successful management of any non-cannabis legal retail facility	2	2	2	2
b) Combined prior experience of proposed owners is more than 1 year and up to 3 years with a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law and with proof of payment of taxes	2	2	2	2
c) Combined prior experience of proposed owners is more than 3 years and up with a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law and with proof of payment of taxes	3	3	3	3
d) Above prior experience was obtained within the City or County of Merced	3	3	3	3
e) Above prior experience was obtained within 100 miles of the City of Merced	1	1	1	1
<b>Section 5: Sub-Total of Points Possible</b>	<b>11</b>	<b>11</b>	<b>11</b>	<b>11</b>
<b>Section 6: Qualifications of Principals/Business Plan</b>				
a) At least one owner is a military veteran with an honorable discharge	1	0	0	0
b) At least one owner is a full-time resident of the County of Merced	1	1	1	1
c) At least one owner is a full-time resident of the City of Merced	2	2	2	2
d) Does the business qualify as a Disadvantaged Business Enterprise (DBE) as defined by the U.S. Department of Transportation?	1	0	0	0
e) Does the business have documented proof of access to at least \$150,000 in capital (or enough capital to pay all startup costs plus at least 3 months of operating costs)?	3	3	3	3
f) Does the business have documented proof of access to at least \$300,000 in capital (or enough capital to pay all startup costs plus at least 6 months of operating costs)?	3	3	3	3
g) Business Plan contain a valid pro forma for at least 3 years of operation	2	2	2	2
h) Business has documented agreements with cannabis distributors to supply products to their business	2	2	2	2
<b>Section 6: Sub-Total of Points Possible</b>	<b>15</b>	<b>13</b>	<b>13</b>	<b>13</b>



**City of Merced**  
**Merit Based Selection Criteria for Commercial Cannabis Business Permits**  
**Scoring for CCBP #18-14R ("Harvest of Merced") at 863 W 15th**

Selection Committee Scores				
Description of Criteria:	Points Possible	Reviewer #1	Reviewer #2	Reviewer #3
Section 7: Employee & Public Relations				
a) The business promotes local hiring or provides incentives for City/County of Merced residents to work with the business	2	2	2	2
b) The business provides employee health benefits for all employees	2	2	2	2
c) The business employs more than 5 people full-time, not counting the owners or security personnel	2	2	2	2
d) Proposal includes an ongoing public information program to inform City residents of cannabis issues and proper/safe/legal use of cannabis products	2	2	2	2
Section 7: Sub-Total of Points Possible	8	8	8	8
Section 8: Community Benefits				
a) Proposal includes benefits to the community, such as defined monetary contributions to local community organizations, or donating time to local community organizations, or any other proposed community benefit acceptable to the City. (0 to 5 points to be awarded at the discretion of the City Selection Committee.)	0 to 5	5	5	5
Section 8: Sub-Total of Points Possible	5	5	5	5
Section 9: Discretion of the City Selection Committee				
a) 0 to 20 additional points may be awarded to a proposal for outstanding features, measures, or programs (above and beyond the minimum requirements) proposed in the Commercial Cannabis Business Permit Application at the discretion of the City Selection Committee.	0 to 20	20	15	16
Section 9: Sub-Total of Points Possible	20	20	15	16
TOTAL POINTS POSSIBLE	100	98	93	94
TOTAL OF SELECTION COMMITTEE SCORES		RANKING		
285		4		
AVERAGE OF SELECTION COMMITTEE SCORES (Total ÷ 3)		95.000		





ATTACHMENT G









**FOR LEASE**  
Call Steve Tinetti  
(209) 384-3885









FOR LEASE  
Call Steve  
(209) 384-3885

NO TRESPASSING  
- THIS PROPERTY IS THE  
PROPERTY OF THE STATE OF  
CALIFORNIA -









FOR LEASE  
Call (209) 384-3885







**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED,  
CALIFORNIA, REPLACING 20.44.170 (“MEDICAL MARIJUANA AND  
CULTIVATION”); AMENDING SECTION 20.10.020 AND TABLE 20.10-1  
 (“COMMERCIAL ZONING DISTRICTS”), AND AMENDING SECTION 20.12.020  
 AND TABLE 20.12-1 (“INDUSTRIAL ZONING DISTRICTS”) OF THE MERCED  
 MUNICIPAL CODE; AND ADDING LAND USE TABLE 20.44-1 TO REGULATE ALL  
 COMMERCIAL CANNABIS ACTIVITIES AND CULTIVATION FOR PERSONAL USE  
 IN THE CITY OF MERCED**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:**

**SECTION 1: Findings.**      The City Council finds and declares as follows:

- A. In 1996, the California electorate approved Proposition 215, the Compassionate Use Act which allows a patient, with a doctor’s recommendation, to use cannabis for medical purposes without the fear of prosecution or arrest; and
- B. In 2003, the California legislature passed Senate Bill 420 (Medical Marijuana Program Act) which amended the Health and Safety Code to permit the establishment of medical cannabis dispensaries for the distribution of cannabis for medical purposes; and
- C. In 2005, the California Board of Equalization began issuing seller’s permits for sales consisting of medical cannabis; and
- D. In 2008, the California Attorney General issued guidelines for the security and non-diversion of cannabis grown for medical use; and
- E. In 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”) further amended in 2016 as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established regulations and a state licensing system for medical cannabis cultivation, manufacturing, delivery, and dispensing; and
- F. In 2016, the voters of the State of California approved and passed Proposition 64 also known as the Adult Use of Marijuana Act (“AUMA”); and
- G. In 2017, the Governor signed into law Senate Bill 94 also known as Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and
- H. Health & Safety Code Section 11362.83 provides that cities are free to adopt and enforce local ordinances that regulate the location, operation, or establishment of medical cannabis; and
- I. After studying various alternatives for the regulation of commercial cannabis considering input from stakeholders and a public hearing, and reviewing the legal status of cannabis under applicable law, the City Council finds that the regulation of commercial cannabis activities is necessary to protect the public health, safety, and welfare by mitigating the adverse secondary effects from the operations of these uses; and



- J. The City of Merced has a compelling interest in ensuring that cannabis is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which these uses may operate, and in providing access of cannabis to residents; and
- K. The proposed Ordinance has been reviewed by City staff in accordance with the Environmental Checklist Form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would create any significant environmental impacts, and City staff has determined that the establishment of regulations for commercial cannabis businesses do not meet any of the thresholds contained in the Checklist that would trigger a significant environmental impact, and thus according to the “general rule exemption” (Section 15061(b)(3) of the CEQA Guidelines, projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required.

## **SECTION 2: Authority**

This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including by not limited to, Article IX, Section 7 of the California Constitution, the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program (California Health and Safety Code Section 11362.7 et seq.), the Medical Marijuana Regulation and Safety Act (AB 266, AB 243, and SB 643; hereafter “MMRSA”), the Adult Use of Marijuana Act (Proposition 64), and the Medical and Adult Use Cannabis Regulation and Safety Act (SB 94; hereafter “MAUCRSA”).

## **SECTION 3: Purpose and Intent**

The purpose and intent of this section is to regulate commercial cannabis business activities in order to ensure the health, safety and welfare of the residents of the City of Merced by establishing regulations necessary for a commercial cannabis business to obtain and maintain a Commercial Cannabis Business Permit (CCBP). Any commercial cannabis businesses operating in the City of Merced shall at all times be in compliance with current State Law and this ordinance. All commercial cannabis facilities shall operate in accordance with the regulations in this ordinance and with the conditions of approval associated with the applicable zone for the parcel of real property upon which the commercial cannabis activities are conducted. Any commercial cannabis business shall qualify for and receive a Commercial Cannabis Business Permit from the City of Merced as provided by this ordinance and operate only in a zone in compliance with Title 20 of the Merced Municipal Code before commencing with any commercial cannabis activity. Any commercial cannabis business without a Commercial Cannabis Business Permit is in violation of this ordinance. The regulations in this article, in compliance with the Compassionate Use Act, the Medical Marijuana Program Act, SB 94, Proposition 64, and the California Health and Safety Code (collectively referred to as “State Law”) do not interfere with the right to use cannabis or medical cannabis as authorized under State Law, nor do they criminalize the possession or commercial activities of cannabis or medical cannabis as authorized under State Law. This ordinance also provides regulations for the cultivation of cannabis for personal use within the City of Merced to ensure the health, safety, and welfare of the residents of the City of Merced.

#### **SECTION 4. Amendments of Chapters 20.10 and 20.12.**

Table 20.10-1 "Permitted Land Uses in the Commercial Zoning Districts" in Section 20.10.020 of the Merced Municipal Code and Table 20.12-1 "Permitted Land Uses in the Industrial Zoning Districts" in Section 20.12.020 of the Merced Municipal Code under "Medical Marijuana Dispensaries" shall be amended to read as follows: "Refer to Table 20.44-1 in Section 20.44.170 for Permitted Land Uses for All Commercial Cannabis Business Activities."

#### **SECTION 5. Amendment of Chapter 20.44.170**

The City of Merced hereby repeals Section 20.44.170 ("Medical Marijuana and Cultivation") of the Merced Municipal Code in its entirety, and replaces it with the amended Section 20.44.170 as set forth below.

#### **20.44.170 – REGULATION OF COMMERCIAL CANNABIS ACTIVITIES – COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED**

##### **20.44.170(A): Zoning Compliance and Commercial Cannabis Business Permit Requirements**

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, I-L and I-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – "X", or permitted – "P". Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

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	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(I)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(I)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(I)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(I)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(H)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(H)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(F)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(F)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(J)
Distribution [3]	Freight/Transport	X	X	P	X	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, 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).

### Land Use Classifications:

Greenhouse, Commercial A - Permitted cultivation area: 0 to 5,000 square feet  
 Greenhouse, Commercial B – Permitted cultivation area: 5,001 to 10,000 square feet  
 Greenhouse, Commercial C – Permitted cultivation area: 10,000 to 22,000 square feet  
 Greenhouse, Commercial D – Permitted cultivation area: 22,000 square feet

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

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:
  - a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(i) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.
  - b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to deny or revoke permission to allow cannabis cultivation as set forth by State law.
  - c. The use of gas products such as, but not limited to CO<sub>2</sub>, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.
  - d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.
  - e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.
  - f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.
  - g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.
  - h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.
  - i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise,

noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

- j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.
  - k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.
  - l. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.
2. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

#### **20.44.170(C): Definitions**

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

- 1. **“Applicant”** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.
- 2. **“Cannabis”** means all parts of the Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.
- 3. **“Cannabis waste”** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.
- 4. **“Canopy”** means all of the following:



- a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;
  - b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;
  - c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and
  - d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.
5. **"City"** means the City of Merced.
6. **"Commercial cannabis business permit (CCBP)"** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.
7. **"Commercial cannabis activity"** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.
8. **"Commercial vehicle"** means a vehicle as defined in Vehicle Code section 260.
9. **"Concentrated cannabis product"** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.
10. **"Cultivation"** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
11. **"Customer"** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.
12. **"Day Care Center"** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.
13. **"Delivery"** means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
14. **"Delivery employee"** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **“Dispensary”** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.
16. **“Display”** means cannabis goods that are stored in the licensed dispensary’s retail area during the hours of operation.
17. **“Display case”** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.
18. **“Distribution”** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.
19. **“Edible cannabis product”** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.
20. **“Fully Enclosed and Secure Structure”** means a fully-enclosed space within a building that complies with the California Building Code (“CBSC”), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.
21. **“Free sample”** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.
22. **“Indoors”** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 19.
23. **“License”** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.
24. **“Limited-access area”** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee’s employees and contractors.
25. **“Medical”** or **“Medicinal”** have the same meaning under the terms of this ordinance.
26. **“Medical cannabis goods”** means cannabis, including dried flower, and manufactured cannabis products.

27. **“Medical cannabis patient”** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.
28. **“Manufacturer”** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.
29. **“Manufacturing” or “manufacturing operation”** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.
30. **“Nonvolatile solvent”** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.
31. **“Operating hours”** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.
32. **“Owner” or “Ownership interest”** means an interest held by a person who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more.
33. **“Package” and “Packaging”** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. “Package” and “packaging” does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.
34. **“Patient or qualified patient”** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician’s recommendation.
35. **“Person”** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
36. **“Pest”** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.
37. **“Physician’s recommendation”** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.
38. **“Premises”** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.



39. **“Pre-roll”** means dried cannabis flower rolled in paper prior to retail sale.
40. **“Primary Caregiver”** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.
41. **“Private security officer”** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.
42. **“Publicly owned land”** means any building or real property that is owned by a city, county, state, federal, or other government entity.
43. **“Purchase”** means obtaining cannabis goods in exchange for consideration.
44. **“Purchaser”** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.
45. **“Quarantine”** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.
46. **“Retail area”** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.
47. **“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).
48. **“Security monitoring”** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.
49. **“Sell,” “sale,” and “to sell”** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.
50. **“Sublet”** means to lease or rent all or part of a leased or rented property.
51. **“State”** means the State of California.
52. **“Testing Laboratory”** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health
53. **“Vehicle alarm system”** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.
54. **“Volatile solvent”** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

55. **“Wholesale”** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

56. **“Youth Center”** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

#### **20.44.170(D): Compliance with State and Local Licensing Requirements**

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

#### **20.44.170(E): General Provisions for Commercial Cannabis Activities in the City of Merced**

##### **1. Commercial Cannabis Business Permit Required**

- a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:
  - i. Cultivation
  - ii. Distribution
  - iii. Manufacturing
  - iv. Retail sales (Dispensary)
  - v. Testing
- b. It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, in or upon any premises within the City of Merced any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced

prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

- c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.
- d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 each year, unless sooner revoked. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.
- e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:
  - i. A felony offense listed in California Health and Safety Code Section 11590.
  - ii. A felony offense listed in California Penal Code Section 667.5(c).
  - iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.
  - iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.
  - v. A felony conviction involving fraud, deceit, or embezzlement.
  - vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

- f. The Commercial Cannabis Business Permit shall be issued to the specific person or persons listed on the Cannabis Permit Application.
- g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(4)(c), and does not run with the land or with the business. Any change to the business location, organizational structure, or ownership may require a new application with associated fees at the discretion of the Director of Development Services or designee.

## **2. Maintenance of Records and Reporting**

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

- a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

- b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations section 1968.
- c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.
- d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.
- e. Contracts with other licensees regarding commercial cannabis activity.
- f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.
- g. Security records.
- h. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.
- i. Proof of building ownership or landlord letter acknowledging business type.
- j. Proof of insurance.

### **3. Operational Standards for All Commercial Cannabis Business Activities**

- a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.
- b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.
- c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.
- d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings.

- e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.
- f. 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. 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. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.
- g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.
- h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.
- i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.
- j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.
- k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.
- l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.
- m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.
- n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis



business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed “abandoned” and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

- o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.
- p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.
- q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.
- r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).
- s. The cannabis businesses’ electrical and plumbing shall comply with State and local regulations.
- t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an “A” rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.
- u. No free samples of any cannabis or cannabis product may be distributed at any time.
- v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2” X 2” in size, issued by the licensee. The badge, at a minimum, shall include the licensee’s “doing business as” name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee’s face.
- w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.
- x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.
- y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days when the permittee applies for that initial permit or if the permittee applies for any additional State licenses. Said notification shall be addressed to the Director of Development Services or his designee at 678 W. 18<sup>th</sup> St., Merced, CA 95340.

- z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:
  - i. Emergency action response planning as necessary
  - ii. Employee accident reporting and investigation policies
  - iii. Fire prevention
  - iv. Hazard communication policies, including maintenance of material safety data sheets.
  - v. Materials storage and handling policies
  - vi. Personal protective equipment policies
  - vii. Operation manager contacts
  - viii. Emergency responder contacts
  - ix. Poison control contacts
- aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

**20.44.170(F): Additional Regulations for Dispensary and Retail Sales of Cannabis**

1. Only four (4) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance.. 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, but in no case shall more than four (4) dispensaries of any kind be allowed within the City of Merced.
2. No retail cannabis facility may engage in check cashing activities at any time.
3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.
4. Restrooms shall remain locked during business hours and not open to the public.
5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.
6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.
7. At all times, the cannabis dispensary is open, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.
8. Security guards are permitted, but not mandated, to carry firearms.
9. All cannabis products available for sale shall be securely locked and stored.

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.
11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.
12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.
13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.
14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 9 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.
15. 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 (banners, A-frames, etc.) or window signs are allowed.
16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: "Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited."
17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis. A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.
18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.
19. No recommendations from a doctor for medical cannabis shall be issued on-site.
20. Shipments of cannabis goods may only be accepted during regular business hours.
21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.
23. No cannabis product shall be visible from the exterior of the business.
24. All required labelling shall be maintained on all product, as required by State regulations, at all times.
25. The business shall post signs that spell out the "Prohibited Conduct Involving Marijuana and Marijuana Products" contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business premises for the education of patrons. The City shall develop a standard format and content for such signs.
26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.
27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive-through facility.

**20.44.170(G): Additional Regulations for Commercial Cannabis Delivery Services**

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.
2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.
3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of \$1,000,000 for any and all vehicles being used to transport cannabis goods.
4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.
5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.
6. The following applies to all deliveries of cannabis products:
  - a. May only be made to a physical address in California.
  - b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.
7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.
9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.
10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).
11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed \$3,000 at any time.
12. Each delivery request shall have a receipt prepared by the dispensary with the following information:
  - a. Name and address of the licensed dispensary
  - b. The name of the employee who delivered the order
  - c. The date and time the delivery request was made
  - d. The complete delivery address
  - e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested.
  - f. The total amount paid for the delivery including any fees or taxes.
  - g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.
13. The delivery business shall provide a flyer that spells out the "Prohibited Conduct Involving Marijuana and Marijuana Products" contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

**20.44.170(H). Additional Requirements for Manufactured Cannabis Businesses**

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.
2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.
3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.
4. Inspections by the City Fire Chief or his designee may be conducting anytime during the business's regular business hours.



5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Outdoor manufacturing of cannabis is expressly prohibited.

#### **20.44.170(I). Additional Requirements for Cannabis Cultivation Businesses**

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.
2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.
5. All outdoor lighting used for security purposes shall be shielded and downward facing.
6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.
7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Outdoor cultivation of cannabis is expressly prohibited.

#### **20.44.170(J). Additional Requirements for Cannabis Testing Laboratory Businesses**

1. A licensed cannabis testing facility shall comply with all State regulations.
2. Any cannabis testing facility shall maintain all certifications required by the State.
3. A licensed cannabis testing facility business, it's owners and employees may not hold an interest in any other cannabis business except another testing business.

4. Inspections by the City Fire Chief or his designee may be conducting anytime during the business's regular business hours.

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

1. A licensed cannabis distribution facility shall comply with all State regulations.
2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.
3. Inspections by the City Police Chief or his designee may be conducting anytime during the business's regular business hours.
4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.
5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:
  - a. The manufacturer or cultivator's name and license number;
  - b. The date of entry into the distributor's storage area;
  - c. The unique identifiers and batch number associated with the batch;
  - d. A description of the cannabis goods with enough detail to easily identify the batch; and
  - e. The weight of or quantity of units in the batch.
6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.
7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.
8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.
9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans.
10. If located in a General Commercial (C-G) zone,
  - a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size,

- b. All loading and unloading activities shall take place within the secured fenced area required above.

#### **20.44.170(L). Commercial Cannabis Business Permit Selection Process**

##### **1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)**

- a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.
- b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.
- c. The City of Merced has established a merit based scoring system to objectively award permits as described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.
- d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the "Qualified Commercial Cannabis Business Application List—Dispensaries/Retail Sales" and shall be notified in writing that they are a "Qualified Commercial Cannabis Business Applicant—Dispensaries/Retail Sales". The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the "Qualified Application List".
- e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.
- f. All Cannabis applications received after the initial application period will be placed on the "Waitlist for Dispensaries/Retail Sales" in the order it is received. Applicants placed on the "Waitlist" shall be notified in writing of their "Waitlist" status.

- g. Cannabis applications placed on the “Waitlist for Dispensaries/Retail Sales” will be moved to the “Qualified Applicant List for Dispensaries/Retail Sales” only if the application passes the Phase 1 review and when a Commercial Cannabis Business Permit for Dispensaries/Retail Sales becomes available, whether by creation of a new license, or the forfeiture of an existing one. Applicants moved to the “Qualified Applicant List for Dispensaries/Retail Sales” from the Waitlist will be notified of the change in writing. If the Director of Development Services or designee determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

**h. Commercial Cannabis Business Permit—Dispensaries/Retail Sales Selection - Phase 1 – Initial Review**

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the “Qualified Applicant List for Dispensaries/Retail Sales” and entered into the Phase 2 review process. These requirements include but are not limited to:

- i. All Application documents required in the City’s Phase 1 application package.
- ii. Application was submitted during the application period.
- iii. Application forms are filled out completely.
- iv. Business Owner(s) / Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application.
- v. Phase 1 application fee is paid.
- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

**i. Commercial Cannabis Business Permit—Dispensaries/Retail Sales Selection - Phase 2 – Final Review and Scoring**

The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees, to make the final decision, based on the merit-based scoring system, of successful applicants to recommend to the Planning Commission for the Commercial Cannabis Business Permit—Dispensaries/Retail Sales. The Selection Panel will review all application documents required in the City’s Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police as well as complete description of the merit based system and all merit based considerations shall be included with the application forms. Phase 2 requirements include, but are not limited to:



- i. Phase 2 application fee is paid and a comprehensive background check of anyone holding an ownership interest is completed to the satisfaction of the Chief of Police.
- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded on the property.
- iii. The Zoning Administrator or designee has issued a Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District and meets the distance requirements from sensitive uses; and,
  - b. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing; and,
  - c. No zoning violations exist on the property; and,
  - d. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy.
- j. The Planning Commission will review all Commercial Cannabis Business Permit—Dispensaries/Retail Sales applications and all other relevant information and determine if a CCBP should be granted. Prior to issuing a Commercial Cannabis Business Permit—Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit—Dispensaries/Retail Sales shall be issued otherwise.

**2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)**

- a. The Commercial Cannabis Business Permit—All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.
- b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.
- c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the “Qualified Commercial Cannabis Business Application List—All Other Cannabis Businesses” and shall be notified in writing that they are a “Qualified Commercial Cannabis Business

Applicant—All Other Cannabis Businesses”. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the “Qualified Application List for All Other Cannabis Businesses”.

- d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.
- e. All Cannabis applications received after the initial application period will be placed on the “Waitlist for All Other Cannabis Businesses” in the order it is received. Applicants placed on the “Waitlist” shall be notified in writing of their “Waitlist” status.
- f. Cannabis applications placed on the “Waitlist for All Other Cannabis Businesses” will be moved to the “Qualified Applicant List for All Other Cannabis Businesses” on a one for one basis only if the application passes the Phase 1 review and when the number of applicants on the “Qualified Applicant List” falls below five, and will be notified of the change in writing. At any time, the Director of Development Services may suspend the requirement for a “Waitlist for All Other Cannabis Businesses” if the number of applications does not merit the need for the “Waitlist.” If the Director of Development Services or designee determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

**g. Commercial Cannabis Business Permit—All Other Cannabis Businesses Selection - Phase 1 – Initial Review**

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the “Qualified Applicant List for All Other Cannabis Businesses” and entered into the Phase 2 review process. These requirements include, but are not limited to:

- i. All Application documents required in the City’s Phase 1 application package.
- ii. Application was submitted during the application period.
- iii. Application forms are filled out completely.
- iv. Business Owner(s) / Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application.
- v. Phase 1 application fee is paid.

- vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

#### **h. Commercial Cannabis Business Permit—All Other Cannabis Businesses Selection - Phase 2 – Final Review**

The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and reviewing the information below will make a recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

- i. Phase 2 application fee is paid and a comprehensive background check of anyone holding an ownership interest is completed to the satisfaction of the Chief of Police.
- ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
- iii. The Zoning Administrator or designee has issued a Zoning Clearance documenting compliance with the following:
  - a. The use is permitted in the Zoning District and meets the distance requirements from sensitive uses; and,
  - b. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing; and,
  - c. No zoning violations exist on the property; and,
  - d. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy.
- i. The Planning Commission will review all Commercial Cannabis Business applications for All Other Cannabis Businesses and all other relevant information and determine if a CCBP should be granted. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

### **3. Appeal of Denial of Commercial Cannabis Business Permit (All Types)**

The Planning Commission will review all Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any 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 within thirty (30) calendar days of receiving the appeal.

- c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
- d. Any interested person may appear and be heard regarding the appeal.
- e. A matter being heard on appeal may be continued for good cause.
- f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

#### **4. Commercial Cannabis Business Permit Annual Renewal (All Types)**

- a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.
- b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.
- c. A Commercial Cannabis Business Permit holder may file a request to transfer ownership of the business. The request shall be made to the Director of Development Services. The request must be in writing and must be at least 60 days prior to the transfer. The Director of Development Services shall review the request and may require additional background material on the proposed new owner. The Director of Development Services shall notify the permit holder in writing along with the reason for approval or denial of the transfer. The original term of the Commercial Cannabis Business Permit shall stay in effect including the renewal date.
- d. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:
  - i. Any act which would be considered a ground for denial of the permit in the first instance.
  - ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity.
  - iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.
  - iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.



- v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
- vi. Violates or fails to comply with the terms and conditions of the permit.
- vii. Fails to pay all applicable City, State, or Federal taxes and fees.

## **5. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)**

- a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.
- 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 within thirty (30) calendar days of receiving the appeal.
  - ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
  - iii. Any interested person may appear and be heard regarding the appeal.
  - iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
  - v. A matter being heard on appeal may be continued for good cause.
  - 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 within thirty (30) calendar days of receiving the appeal.
    - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
    - d. Any interested person may appear and be heard regarding the appeal.
    - e. A matter being heard on appeal may be continued for good cause.
    - f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

## **6. Revocation of Commercial Cannabis Business Permit (All Types)**

- a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:
  - i. Any act which would be considered a ground for denial of the permit in the first instance.
  - ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity.
  - iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.
  - iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
  - v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
  - vi. Violates or fails to comply with the terms and conditions of the permit.
  - vii. Fails to pay all applicable City, State, or Federal taxes and fees.
- b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.
- 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 within (thirty) 30 days of receiving the appeal.
  - ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.
  - iii. Any interested person may appear and be heard regarding the appeal.
  - iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.
  - v. A matter being heard on appeal may be continued for good cause.
  - vii. 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 within thirty (30) calendar days of receiving the appeal.
    - c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.
    - d. Any interested person may appear and be heard regarding the appeal.
    - e. A matter being heard on appeal may be continued for good cause.
    - f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the

conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

**20.44.170(M): Limitations on the City's Liability**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;
2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;
3. Name the city as an additionally insured on all City required insurance policies;
4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and
5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

**20.44.170(N): Enforcement**

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.
2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:
  - a. A discrepancy of more than \$1,000 in inventory over a period of 24 hours or \$3,000 over period of 7 days.
  - b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.
  - c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.
  - d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.
4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

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

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. Initial Application Fees. The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).
2. Application Renewal Fees. The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.
3. Business License Fee. The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.
4. Commercial Cannabis Regulatory Fee. The Business Owner shall pay an annual regulatory fee ("Regulatory Fee") to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.
5. All required taxes including sales and use taxes, business, payroll etc.
6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced.

## **SECTION 6 : SEVERABILITY**

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

## **SECTION 7. PUBLICATION.**

The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the 20th day of November, 2017, and was passed and adopted at a regular meeting of said City Council held on the 4th day of December, 2017, by the following called vote:

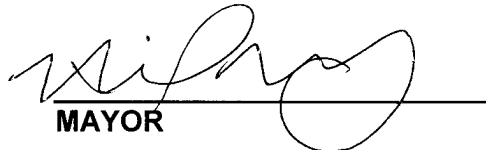
**AYES: 5      Council Members:** BLAKE, MARTINEZ, MCLEOD, PEDROZO,  
SERRATTO

**NOES: 2      Council Members:** BELLUOMINI, MURPHY

**ABSTAIN: 0      Council Members:** NONE

**ABSENT: 0      Council Members:** NONE

**APPROVED:**


  
**MAYOR**

**ATTEST:**  
**STEVE CARRIGAN, CITY CLERK**

**BY:**   
**Assistant City Clerk**

**(SEAL)**

**APPROVED AS TO FORM**

  
**City Attorney**      11/28/2017  
**Date**







City of Merced

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## **Cannabis Related Occupancies – Commercial Building Permit Application Submittal Requirements**

The following regulations pertain to City of Merced Building Division and Fire Department requirements for the permit application, plan review, approval and inspection of cannabis-related occupancies. The requirements listed below are intended to assist the applicant with some of the requirements applicable to a Building Division permit submittal, and are not to be considered an all-inclusive listing of Building or Fire Department requirements for plan approval or permit issuance. Only items pertinent to each specific submittal are to be included. Every listed item will not necessarily be applicable to all projects.

### **General Requirements**

1. A building permit is required to verify occupancy for a cannabis facility, even if no improvements to the property are proposed. The building permit application must meet the City's general building permit submittal requirements.
2. Construction plans and building permits are required per the California Building Code Section 105 when the owner or occupant intends to construct, enlarge, alter, remove, repair, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace an electrical, gas, mechanical or plumbing system, the installation of which is regulated by the Building and/or Fire Code, or to cause this work to be done.
3. The plans must be prepared by a licensed professional registered with the State of California and must address specific requirements for the use as outlined in the codes and standards adopted by the City of Merced and the State of California.
4. An application for a building permit will not be accepted for a cannabis related business without approval for concurrent review or approval of a Commercial Cannabis Business Permit (CCBP). The CCBP process must be completed and approved prior to the issuance of the building permit.
5. All building permit design and supporting documentation is required to be prepared, stamped and signed by qualified design professionals licensed and registered by the State of California.
6. All construction and related work must be performed by contractors licensed by the State of California as general and/or specialty contractors for the specific discipline of work to be performed.
7. All design and construction shall be consistent with the provisions of the Merced Municipal Code and the current edition of the California Code of Regulations Title 24 as adopted by the California Building Standards Commission, and as amended by the City of Merced Municipal Code.
8. A City of Merced Building Permit Application form must be completed in its entirety and included with each submittal. <https://www.cityofmerced.org/depts/cd/building/applications/default.asp>
9. Codes and Standards regulating cannabis facilities currently adopted by the City of Merced include, but are not limited to:
  - A. *California Building Code (CBC)*
  - B. *California Electrical Code (CEC)*
  - C. *California Mechanical Code (CMC)*
  - D. *California Plumbing Code (CPC)*
  - E. *California Energy Code (CEC)*



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- F. *California Fire Code (CFC)*
- G. *California Existing Building Code (CEBC)*
- H. *California Green Building Standards Code (CalGreen)*
- I. *California Health and Safety Code (HS&C)*
- J. *California Existing Building Code (CEBC)*
- K. *National Fire Protection Association Standards (NFPA)*
- L. *Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)*
- M. *City of Merced Municipal Code (CMMC)*

10. A location specific building permit application package is required for each individual building and building address. For a detail of commercial submittal package content review Commercial Plan Submittal Checklist [https://www.cityofmerced.org/depts/cd/building/download\\_information.asp](https://www.cityofmerced.org/depts/cd/building/download_information.asp) . Additional documentation may be required for structural modifications and/or additions to existing buildings or structures. All submittals are electronic. Electronic plan review instructions can be found on the city website [https://www.cityofmerced.org/depts/cd/building/electronic\\_plan\\_review/default.asp](https://www.cityofmerced.org/depts/cd/building/electronic_plan_review/default.asp) .
11. The plan review fees will be calculated after the city is in receipt of a full complete submittal. Applicant will be contacted with the amount due. Fees must be paid in full before the plans will be accepted for plan review.
12. Construction or work for which the permit is required shall be subject to inspection by the Building Official and such construction or work shall remain accessible and exposed for inspection purposes until approved. No construction shall commence prior to the issuance of a building permit.
13. No building or structure shall be used or occupied, and no change in the existing occupancy classification or the use in the same occupancy classification, of the building or structure or portion thereof shall be made, until the Building Official has issued a certificate of occupancy. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of applicable codes and standards or the other regulations of the City of Merced.
14. The owner/occupant is required to keep all City approved plans, specifications and related documents on the premises, in an easily accessible location for City inspection staff for the required inspections.
15. A copy of the approved plans shall be maintained on site for any future operational, or other related inspections after a Certificate of Occupancy is given.

### **Building Code Requirements**

*(Applicable to all occupancies and MAUCRSA permit types)*

1. The Occupancy and Construction Type of the proposed facility shall comply with the applicable provisions of CBC Chapters 3 and 6.
2. Means of egress shall comply with CBC Chapter 10.
3. The design for the occupant load is based on CBC Chapter 10, § 1004. Growing, storage and shipping areas are 300 sq. ft. per person; cannabis infused products, testing and business areas are 100 sq. ft. per person.
4. Interior finishes shall comply with CBC Chapter 8.
5. Access for persons with disabilities shall comply with the applicable provisions of CBC Chapter 11B.



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### **Fire Code Requirements**

*(Applicable to all occupancies and MAUCRSA permit types)*

All applicants will need to provide a detailed scope of work related to all business activities and products utilized in their business model or process. List license type proposed, storage configurations and hazardous materials to be utilized. Prior to finalization of building permit, operational permits will need to be secured with the Fire Department.

1. The smoking or carrying of a lighted pipe, cigar, cigarette or any other type of smoking paraphernalia or material is prohibited in the areas indicated in CFC § 310.
2. Storage of combustible materials in buildings shall be orderly. Storage shall be separated from heaters or heating devices by distance or shielding so that ignition cannot occur per CFC § 315.
3. Any security device or system that emits any medium that could obscure a means of egress in any building, structure or premise shall be prohibited per CFC § 316.5.
4. Reporting of emergencies, coordination with emergency response forces, emergency plans and procedures for managing or responding to emergencies shall comply with the provisions of CFC § 401.
5. Emergency evacuation drills complying with provisions of this section shall be conducted at least annually for Group F occupancies listed in section 404 or when required by the fire code official. Drills shall be designed in cooperation with the California Fire Code and local authorities per CFC § 405.
6. The provisions of CFC § 407 shall be applicable where hazardous materials subject to permits under CFC §5001.5 are used and/or stored on the premises or where required by the fire code official.
7. Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the Fire Code Official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official per CFC §506.1
8. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in CFC § 903 and as amended by the Merced Municipal Code. A change in the occupancy of the space or an expansion of square footage could require the installation of a fire suppression system for the building.
9. Automatic fire-extinguishing systems, other than automatic sprinkler systems, shall be designed, installed, inspected, tested and maintained in accordance with the provisions of CFC § 903 and the applicable referenced standards.
10. Portable fire extinguishers shall be installed in F, B and U occupancy groups per CFC § 906. The size and distribution of portable fire extinguishers shall be in accordance with CFC § 906 and *California Code of Regulations, Title 19*.
11. Duct smoke detectors complying with UL 268A shall be installed in accordance with the CBC, CFC, CMC and NFPA 72 in the main supply air duct of each air-conditioning system having a capacity greater than 2,000 CFM.
12. An approved fire alarm system installed in accordance with the provisions of the CFC and NFPA 72 shall be provided in new buildings and structures in accordance with CFC § 907.2 and provide occupant notification in accordance with CFC § 907.6, unless other requirements are provided by another section of this code.
13. High-piled storage or rack storage in any occupancy group shall comply with CFC Chapter 32.
14. Storage, use and handling of compressed gases in compressed containers, cylinders, tanks, and systems shall comply with CFC Chapter 53 including those gases regulated elsewhere in the CFC. Partially full compressed gas container, cylinders or tanks containing residual gases shall be considered as full for purposes of the controls required.



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15. Compressed gases classified as hazardous materials shall also comply with CFC Chapter 50 for general requirements and the applicable sections of Chapters 58 (Flammable Gases), 60 (Highly Toxic and Toxic Materials), 63 (Oxidizer, Oxidizing Gases and Oxidizing Cryogenic Fluids) and 64 (Pyrophoric Materials).
16. The storage, use and handling of all hazardous materials shall be in accordance with CFC Chapter 50 (Hazardous Materials) and the applicable sections of Chapter 54 (Corrosive Materials), Chapter 55 (Cryogenic Fluids), Chapter 57 (Flammable and Combustible Liquids) and Chapter 58 (Flammable Gases and Flammable Cryogenic Fluids). The maximum allowable quantity of hazardous materials per control area will be established using CFC § 5003.1. Applicant will need to contact the Fire Department for hazardous materials storage, use and handling requirements.
17. Hazardous Materials Inventory Statement (HMIS) per CFC § 5001.5.2. An application for building permit shall include an HMIS. The HMIS shall include the following information:
  - A. Product name.
  - B. Component.
  - C. Chemical Abstract Service (CAS) number.
  - D. Location where stored or used.
  - E. Container size.
  - F. Hazard classification.
  - G. Amount in storage.
  - H. Amount in use-closed systems.
  - I. Amount in use-open systems.

The business will also need to comply with electronic reporting requirements specific to the California Environmental Reporting System. Applicants will need to contact the Fire Department for direction and permitting related to hazardous materials inventory reporting amounts.

18. Fumigation and insecticidal fogging operations within buildings, structures and spaces shall comply with CFC Chapter 26.

### **Electrical Code Requirements**

*(applicable to all occupancies and MAUCRSA permit types)*

1. All electrical system design and permitting is required to be performed by licensed engineers or architects registered in the State of California or qualified and experienced licensed electrical contractors if they are performing the actual installations (design-build).
2. All electrical system(s) installation is required to be completed by licensed electrical contractors.
3. The electrical system must be sized and installed in accordance with the California Electrical Code.
4. A single line diagram of the existing and proposed electrical system, including the main electrical service shall be provided in the submittal along with panel schedules and load calculations. CEC Article 215.5.
5. Electrical services which are 400 amps or greater must be designed by licensed electrical engineers registered in the State of California or qualified and experienced licensed electrical contractors if they are performing the actual installations (design-build).
6. All electrical equipment must be listed and labeled by an approved testing agency, CEC Article 110.3.



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### **Mechanical Code Requirements**

*(applicable to all occupancies and MAUCRSA permit types)*

1. The provisions of the CMC shall apply to the erection, installation, alteration, repair, relocation, replacement, addition to or the maintenance of mechanical systems.  
A ventilation system shall be required to filter contaminants to the exterior of the building and any adjoining property. The mechanical ventilation of exhaust system shall be installed to control, capture and remove emissions or other odors generated from product use or handling where required in accordance with the Building or Fire Code. The design of the system shall be such that the emissions or other odors are confined to the area in which they are generated by air currents, hoods, or enclosures and shall be exhausted by a duct system to a safe location or treated by removing contaminants.
2. Provide an exhaust system designed and constructed to capture sources of contaminants to prevent spreading of contaminants to other parts of the occupied spaces of the building (CMC Chapter 5).
3. Building elements separating the cannabis agricultural area from other occupied portions of the building must be air sealed to prevent odor migration into adjacent spaces.
4. The inlet for the ventilation system must be located in the area(s) of the highest contaminant concentration per CMC § 505.6.
5. Ventilation required. Every occupied space shall be ventilated by natural means in accordance with CMC § 402.2 or by mechanical means in accordance with CMC § 402.3.
6. Label information. A permanent factory-applied nameplate shall be affixed to appliances on which shall appear in legible lettering, the manufacturer's name or trademark, the model number, serial number and the seal or mark of the approved agency. A label shall also include all applicable information per CMC § 307.

### **Plumbing Code Requirements**

*(applicable to all occupancies and MAUCRSA permit types)*

1. New plumbing installations and alteration must meet requirements of the California Plumbing Code (CPC).
2. The number of required fixtures shall be calculated using CPC § 422.1, Table 422.1 and Table A.
3. The provisions of the CPC shall apply to the erection, installation, alteration, repairs, relocation, replacement, addition to or the maintenance of plumbing systems, nonflammable medical gas, carbon dioxide extraction systems, inhalation, anesthetic, vacuum piping, nonmedical oxygen systems, sanitary and condensate systems, vacuum collection systems, fuel gas distribution piping and equipment, gas water heaters and water heater venting.
4. Plan documents must identify the locations of plumbing fixtures and fixture types.
5. Plans shall identify the locations of water heater(s), water supply and distribution, indirect and special waste, sanitary discharge, vents, traps, backflow preventers and interceptors and separators.
6. Plumbing fixtures and fixture fittings must be designed for individuals with disabilities and with the appropriate standards.
7. Installed appliances regulated by this code shall be listed and labeled for the application in which they are installed and used, unless otherwise approved in accordance with the CPC.





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### **Energy Code Regulations**

*(applicable to all occupancies and MAUCRSA permit types)*

New, modified and altered building envelope, lighting and mechanical systems must be designed to comply with California Energy Code Nonresidential requirements. The City of Merced is located in Climate Zone 12. For purposes of energy design, the designer is responsible for specifying the building features that determine compliance with Building Energy Efficiency Standards and other applicable building codes. Alterations must comply with mandatory measures for the altered components.

1. The energy documents will be required for lighting, cooling, heating, water heating and building envelope modifications.
2. Building envelope, lighting and mechanical systems shall comply with the applicable requirements of the California Energy Code.

### **CalGreen Code Requirements**

*(applicable to all occupancies and MAUCRSA permit types)*

California Green Building Standards Code provides provisions to outline planning design and development methods for environmentally responsible site and building design to protect, restore and enhance the environmental quality of the site, building and respect the integrity of adjacent properties. Alterations and additions to existing buildings must include a Green Building Check List for non-residential construction if the valuation is \$200,000 or greater or if the addition is 1,000 square feet or larger.

### **MAUCRSA Permit Specific Requirements**

The requirements in this section are related to specific permit types as outlined in the *California State Medicinal and Adult Use Cannabis Regulation and Safety Act* (MAUCRSA)

### **Cultivation Facilities**

*(MAUCRSA permit types 1-4)*

1. Mixed use grow facilities are to meet CBC, Chapter 3 requirements based upon Use and Occupancy Classification for a Factory Industrial, F-1, Moderate-hazard Occupancy. CBC § 306.2.
2. Grow facilities such as greenhouses for the exclusive use of plant production may be classified as a U occupancy and shall be consistent with the requirements of CBC Appendix C.
3. Grow lights must be installed per the manufacturer's instructions and wired per CEC article 410.
4. NM cable (Romex) is not allowed for use in damp locations (grow rooms) (CEC § 334.10). Approved wiring methods utilized in grow facilities shall be in accordance with wet use "Wiring Methods and Materials", (CEC Chapter 3).
5. Cultivation facility exhaust outlets must be located 10' from the property lines, operable openings into the building and from mechanical air intakes (CMC § 506.9).



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### **Manufacturer Facility**

*(MAUCRSA permit type 6-7)*

1. Type 6 Manufacturing facilities are to meet CBC, Chapter 3 requirements based upon Use and Occupancy Classification for a Factory Industrial, F-1, Moderate-hazard Occupancy. CBC § 306.2.
2. Portions of the cannabis Infused Product facilities may be considered a Hazardous Location based on the method used for the THC extraction and the amount of hazardous material stored. Full disclosure of the extraction process will be required at the time of building permit submittal.
3. Cannabis manufacturing facilities shall submit as a part of their permit application a comprehensive description of the program and process proposed for the operation and production at the facility. The documentation shall, as applies, include all of the following:
  - A. A plan that specifies all means to be used for extracting, heating, washing, or otherwise changing the form of the cannabis plant or for testing any cannabis or cannabis product and safety measures for each such process.
  - B. A description of all toxic, flammable, or other materials regulated by a federal, state, or local government that will be used, kept, or created at the facility, the quantities and location of such materials, and the manner in which such materials will be stored.
  - C. A description of the processes used to extract or distill cannabis derivatives from their source and the processes used to incorporate cannabis derivatives into all retail cannabis products produced.
4. Concentrations of grease, smoke, heat, steam or products of combustion created when cannabis is manufactured into products including, but not limited to, foods, beverages, salves, inhalants and tinctures are to be contained as detailed in the CMC §§ 506 and 507 (Type I and Type II hoods).
5. Facilities used for processing cannabis into foods, beverages, salves, inhalants, tinctures or other forms for human consumption or use are subject to review and approval by the [California Department of Public Health, Manufactured Cannabis Safety Branch](#). A separate license application is required through their office.
6. Sanitation requirements for facilities used for processing cannabis into foods, beverages, salves, inhalants and tinctures shall meet the California Department of Public Health guidelines that are to be detailed on the drawings.
7. Infused product extraction and hazard containment equipment must be listed, labeled and installed per NEC 110.3.
8. Storage, use and handling of compressed gases in compressed gas containers, cylinders, tanks and systems shall comply with CFC, NFPA Standards, H&SC and CCR, including those gases regulated elsewhere in this code. Partially full compressed gas containers, cylinders or tanks containing residual gases shall be considered as full for the purposes of the controls required.

*Compressed gases classified as hazardous materials shall also comply with CFC Chapters 50 and 53 for general requirements and chapters addressing specific hazards, including Chapters 58 (Flammable Gases), 60 (Highly Toxic and Toxic Materials), 63 (Oxidizers, Oxidizing Gases and Oxidizing Cryogenic Fluids) and 41 (Pyrophoric Materials).*



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**Testing/Laboratory**

*(MAUCRSA permit type 8)*

1. Type 8 Testing/Laboratory facilities are to meet CBC, Chapter 3 requirements based upon Use and Occupancy Classification for a Business Group, B, Occupancy. CBC § 304.1.
2. Required hoods shall meet the requirements of CMC §§ 506, 507 and 508.
3. Hazardous materials storage, use, handling and wastes shall be permitted and reported through the Fire Department prior to operation.

**Dispensaries**

*(MAUCRSA permit type 10)*

Type 10 Dispensary facilities are to meet CBC, Chapter 3 requirements based upon Use and Occupancy Classification for a Mercantile Group, M, Occupancy. CBC § 309.1

## NOTICE OF EXEMPTION

---

**To:** \_\_\_\_\_ Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

**From: (Public Agency)**  
City of Merced  
678 West 18th St.  
Merced, CA 95340

  X   County Clerk  
County of Merced  
2222 M Street  
Merced, CA 95340

**Project Title:** Commercial Cannabis Business Permit Application #18-14R (Environmental Review #18-27)

**Project Applicant:** Harvest of Merced, LLC.

**Project Location (Specific):** 863 W. 15<sup>th</sup> Street (APN: 031-173-012)

**Project Location - City:** Merced

**Project Location - County:** Merced

**Description of Nature, Purpose, and Beneficiaries of Project:** The project involves the application for a license to operate a dispensary for both medicinal and adult use cannabis, all in accordance with state and local regulations.

**Name of Public Agency Approving Project:** City of Merced

**Name of Person or Agency Carrying Out Project:** Harvest of Merced, LLC.

**Exempt Status:** (check one)

\_\_\_\_ Ministerial (Sec. 21080(b)(1); 15268);

\_\_\_\_ Declared Emergency (Sec. 21080(b)(3); 15269(a));

\_\_\_\_ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

  X   Categorical Exemption. State Type and Section Number: Section 15332, Class 32 – Projects characterized as in-fill development;

\_\_\_\_ Statutory Exemptions. State Code Number: \_\_\_\_\_.

\_\_\_\_ General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:** Pursuant to the California Environmental Quality Act (CEQA), Guidelines Section 15332 Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value as habitat for endangered, rare or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and, (e) The site can be adequately served by all required utilities and public services.

**Lead Agency:** City of Merced

**Contact Person:** Michael Hren, Principal Planner **Area Code/Telephone:** (209) 385-6858

**Signature:** \_\_\_\_\_/s/ Michael Hren **Date:** 8/24/18 **Title:** Principal Planner

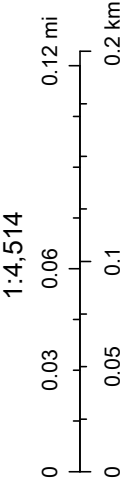
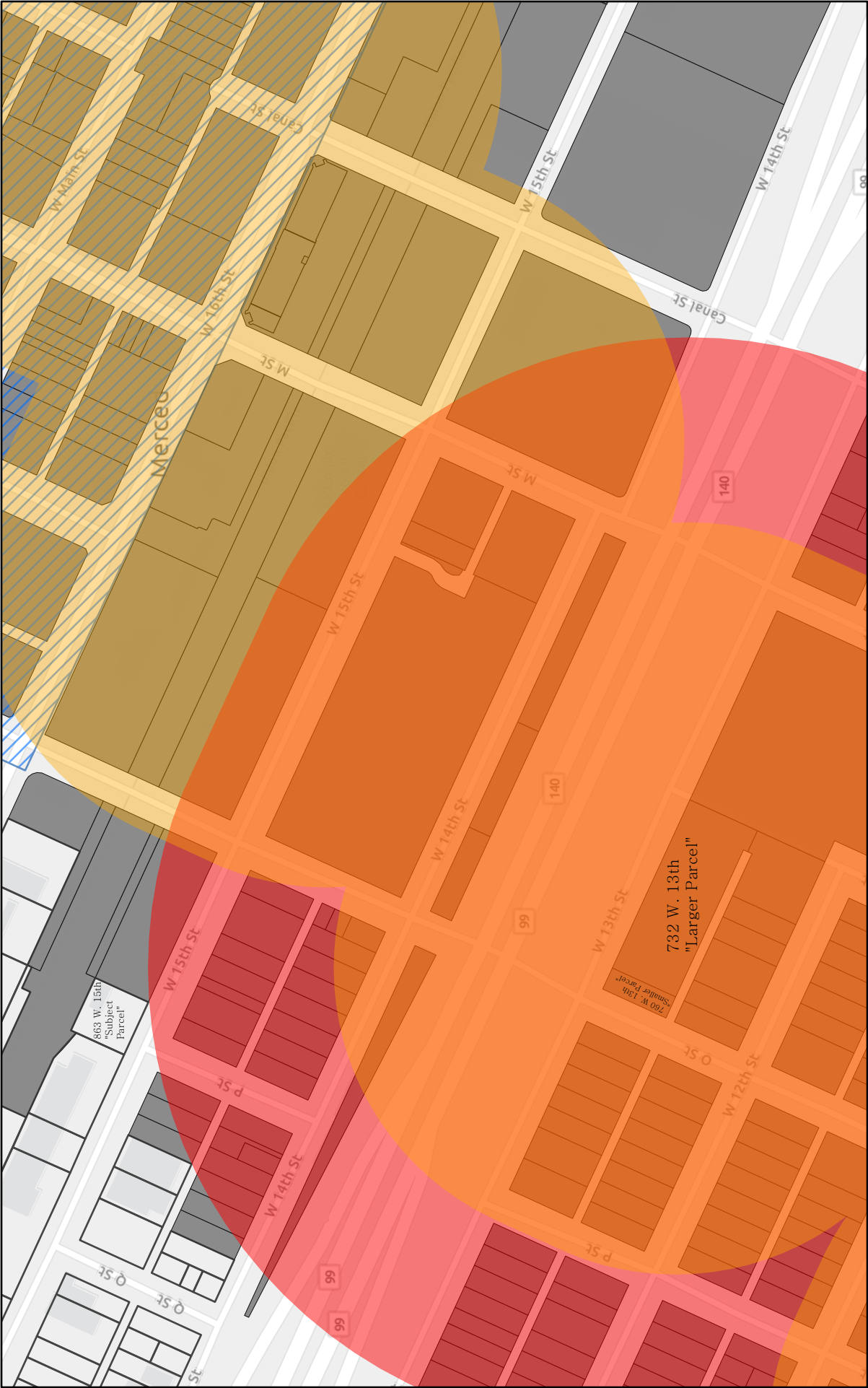
  X   Signed by Lead Agency

Date Received for Filing at OPR: \_\_\_\_\_  
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code  
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

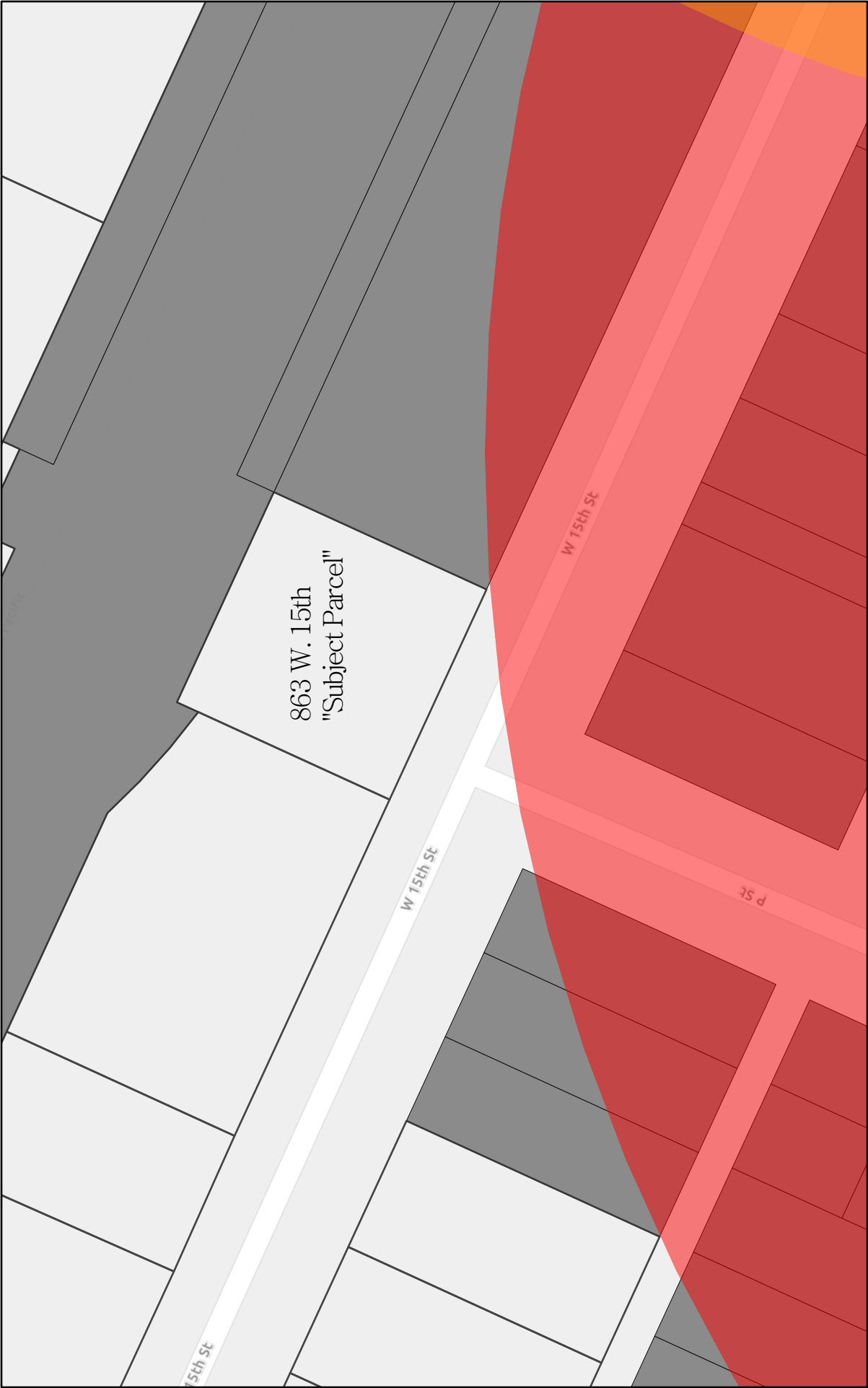
ATTACHMENT J

City Of Merced-Cannabis Ordinance Map





# City Of Merced-Cannabis Ordinance Map



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City Of Merced Addresses

Properties With Appropriate Zoning for Cannabis Activities

Properties With Inappropriate Zoning for Cannabis Activities

City of Merced Limits

600FT Buffers

1000 FT Buffers

0

0.01

0.02

0.03 mi

0

0.01

0.02

0.04 km

1:1,128

0.01

Room Number	Program Title	Age of Population Served	Program Services	Comments
W-13	MCOE Special Education – Supervisor is Rich Klietman, Teacher Marci Gamble	18-22 years	Special Ed Services	This the room adjacent to "O" Street.
W-12	Foster Youth Service Coordinating Program (FYSCP) – Supervisor Daphne Post, Lead Liaison Sandra Stevens	All ages Kindergarten - 12th Grade	Approximately 800 foster youth, countywide. 90% are minors. W-12 is also utilized for the FYSCP TECALS Program serving approximately 30 minor Foster Youth per year.	W-12 serves primarily as an office for the FYSCP Staff. However, there are times when specialized trainings, for foster youth ages 13-18, take place in that office.
W-11	California Student Opportunity and Access Program (Cal-SOAP) – Supervisor Daphne Post, Program Manager Lyalla Dias.	Grades 6-12	All Programs related to youth transitioning from high school to post-secondary education (college applications, FAFSA, etc...). During the summer, CAL-SOPA operates a 6-week summer program for 16-28 year old, in school youth. They are often at the Wolfe Center utilizing the Computer Lab (W-10)	W-11 is an office space only. The youth, grades 6-12, are served at their respective school sites and not at Wolfe Educational Center.
W-10	Computer Lab – Supervisor Daphne Post	14-24 years old	Primarily utilized by adults, but, we sporadically serve minors in our FYSCP, our Cal-SOAP Program, and, on occasion, high school seniors (ages 17-19) use the lab for FAFSA.	
W-09	MCOE EMPOWER Program – Supervisor Daphne Post, Lead Advisor Rebecca Lincoln	18-24 years	One year program for training and employment gains.	
W-08	Daphne Post Office	N/A		
W-07	Bathroom	Adults only		
W-06 Through W-01	MCOE Adult ROP Training Programs – Supervisor Mary Whited,	Adults only	W1-2 Teacher Kristine Lindsey Medical Assisting, W 3-4 Teacher Beth Smith Office Occupations, W 5-6 Teacher Donna Acheson Foundations in Early Education	Room W-01 is adjacent to "N" Street









VAN ACCESSIBLE

W11

W10

WALKER EDUCATIONAL  
CENTER  
700 W. 12th St.





W13



W12





















CITY OF MERCED  
Planning Department

STAFF REPORT #97-20

AGENDA ITEM: 4.2

MEETING DATE: July 23, 1997

FROM: Jack D. Lesch, City Planner

PREPARED BY: Julie Sterling, Assistant Planner

SUBJECT: Conditional Use Permit (CUP) Application #931 (R-3-1.5), initiated by Booker Lawler Architects, representing Merced County Office of Education, applicant for Gilbert and Diane Chan, Santiago Villegas, and Letha Meadows, property owners, to demolish an existing church and two dilapidated single-family residences and provide a Regional Occupational Program (R.O.P.) Educational Campus which consists of 7 relocatable buildings. This site is generally located on the south side of W. 13th Street between "N" and "O" Streets within a Medium Density Residential (R-3-1.5) zone. \*PUBLIC HEARING\*

ACTION: Approve/Disapprove/Modify

1. Environmental Review (Draft Negative Declaration)
2. Conditional Use Permit

SUMMARY

The applicant is requesting approval to demolish an existing church and two dilapidated houses (located on the southwest corner of "N" and 13th Streets) to allow a Regional Occupational Program (ROP) educational campus consisting of five relocatable buildings.

The project also includes a parking lot with 26 spaces, landscaping, and a perimeter fence. The applicant has worked closely with staff and is in agreement with the conditions. Staff is recommending approval of the project.

RECOMMENDATION

The Planning staff recommends approval of Conditional Use Permit (CUP) Application #931, subject to the following conditions:

1. The proposed project shall be constructed/designed as shown on Exhibit I (site plan) and Exhibit II (elevations) -- Attachments B and C.
- \*2. All conditions contained in Resolution #1249 ("Standard Conditional Use Permit Conditions") shall apply.
- \*3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the Engineering Department.
- \*4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.

ATTACHMENT N

5. The applicant shall apply for a lot merger combining Lots 1 through 7 of Block 254 prior to building permit issuance.
6. Public improvements required include, but are not limited to:
  - a. Driveways per City standard D-7;
  - b. All sidewalks are to be replaced per City standard SCG-1;
  - c. Existing driveways not proposed for the project are to be closed;
  - d. Refuse enclosures per City standards R-2 and R-4;
  - e. A reduced pressure backflow device is required on the water service;
  - f. Installation of a wheelchair ramp is required on the southwest corner of W. 13th and "N" Streets;
  - g. The on-site catch basin shall be connected to the 13th Street curb face per City standard SD-5 (as dry wells are not acceptable);
  - h. The existing water and sewer services that are no longer used shall be abandoned per City standards.
7. Uniform Fire Codes required for this project include a fire alarm system, and if classrooms are 1,000 square feet or more, then two exits are required to be equipped with panic hardware.
8. The applicant shall provide a minimum 15-foot landscape planter along the 13th Street frontage. Additional trees (15-gallon placed 30-foot-on-center) or quick growing shrubs (i.e., photinias; 5-gallon placed 5-foot-on-center) are required along the west and east property lines for screening purposes.
9. Detailed landscape and irrigation system plans shall be submitted in conjunction with the building permit application. Landscape plans shall indicate species type, size, and location. Drought-resistant plants and water conservation irrigation techniques, such as drip irrigation system, shall be utilized to the greatest extent possible.
10. Light fixtures on the building and within the parking lot shall be equipped with hoods and oriented in a manner so as not to spill over onto the streets or adjacent parcels.
11. Demolition of the existing structures will require a demolition permit through Inspection Services. Prior to issuance of a demolition permit, the applicant must have approval from the San Joaquin Air Pollution Control District.
12. A pedestrian gate is required along the south property line between Units E and F (details to be worked out with staff).

NOTE: Conditions that are not discretionary are designated with a (\*).

#### PROJECT DESCRIPTION

The proposed project will involve demolition of an existing church (located on the southwest corner of W. 13th and "N" Streets) and two dilapidated houses (located west of the church) to allow for relocation of the Merced County Office of Education's Regional Occupation Program (ROP) facility. Five relocatable classrooms, and an office and bathrooms ranging in size from 480 square feet to 2,880 square

feet (largest classroom) are proposed to be located on the 1.2-acre site. The project also provides for a 26-space parking lot, landscaping, and perimeter cyclone fencing.

Surrounding uses are noted at Attachment A.

North: Hwy. 99 (across 13th Street)

East: Merced County Office of Education (across "N" Street)

South: Single-Family Residential (R-3-1.5) and Educational

West: Single-Family Residential (R-3-1.5)

#### BACKGROUND

There are four vacant parcels located between an existing (occupied) dwelling on the southeast corner of W. 13th and "O" Streets and the two dilapidated houses and church (see Attachment A). Approximately ten years ago, a fire destroyed the homes formerly on the vacant lots. The two houses (east of the vacant parcels) have been condemned and would be slated for demolition if the Planning Commission approves the project. The New Assembly Church (located on the southwest corner of W. 13th and "N" Streets) has functioned at this location for many years.

The Regional Occupation Program (ROP) operation is currently utilizing classrooms at East Campus ("G" and E. Main Streets). They are requesting approval to relocate their operation to the subject site.

#### FINDINGS/CONSIDERATIONS

##### Compliance with the General Plan

- A. The proposed project complies with the General Plan designation of High Medium Density (HMD) and zoning designation of Medium Density Residential (R-3-1.5).

##### Proposed Operation

- B. The Regional Occupation Program provides vocational-oriented classes for adult and high school students. Some of the classes offered include marketing, office occupations, health care, and computer lab. For the most part, approximately 40 to 50 high school students are transported by small buses or vans to classes scheduled between 8:00 a.m. and 6:00 p.m. Additionally, approximately 30 to 40 adult students attend daytime classes. Evening classes are available and typically have an enrollment of between 15 to 20 adult students. It should be noted that there are 11 staff members during the day and 2 staff members during evening hours.

##### Building Design/Materials

- C. The proposed relocatable buildings are typical units found on educational campuses. The proposed colors include Kelly-Moore "Oyster" for the wood siding,



"Loam" for wood trim at the doors and windows, and "Weathered Copper" for the metal standing seam parapets. The applicant is proposing extensive landscaping between the parking lot and the buildings. Staff is also recommending that additional landscaping be installed along the west and east property lines (see Condition #8).

A cyclone fence is proposed along the west, south and east property lines and with connecting gates to Units A and G. The fire department has recommended an additional pedestrian gate be installed along the south property line between Units E and F (see Condition #12).

#### Relationship to Entire Area

- D. The site currently has two condemned houses, a church in disrepair and is surrounded by residential and educational uses. Staff feels that the proposed ROP use will be a compatible neighbor for the existing uses.

#### Parking/Circulation

- E. The off-street parking requirement for schools is one for each employee. The applicant indicates that there are 11 staff members for daytime classes and 2 staff members for evening classes. Twenty-six parking spaces are proposed with an area designated for bus loading and unloading. Because of the site's proximity to major thoroughfares, commuting and public transportation options are readily available thereby reducing the need for students and staff to drive their vehicles. The applicant also indicates that the majority of the daytime students are either bused or use public transportation.

The project site is accessed by W. 13th (Collector) Street and "N" (local) Street. The project includes an entrance driveway on W. 13th Street and an exit drive on "N" Street (see Attachment B). It is expected that project related trips will utilize W. 13th Street given its direct connection to State Highway 99 and Routes 59 and 140.

Daytime enrollment will include approximately 40 adult students and 50 high school students. Evening classes will include approximately 20 adult students for a total of 110 students. As previously mentioned, there will be 11 staff members during the daytime and two staff during evening classes. Based on these enrollment levels, it is expected that the project will generate approximately 154 Average Daily Trips (ADTs). The 154 ADT's do not reflect a reduction for any student use of public/project transportation. Given the entrance driveway on W. 13th Street, current and projected capacity of the roadway, and the low percentage of contribution of traffic expected from the project, the adjacent collector street is more than adequate to serve the project (for further details refer to Initial Study #97-09, page 8.2).

#### Public Improvements

- F. A storm drain exists at W. 13th and "O" Streets. The curb and gutter on the south side of W. 13th Street (from "N" to "O" Streets) serves the proposed project and can adequately convey storm flows (which include project flows) to the storm drain.

Environmental Clearance

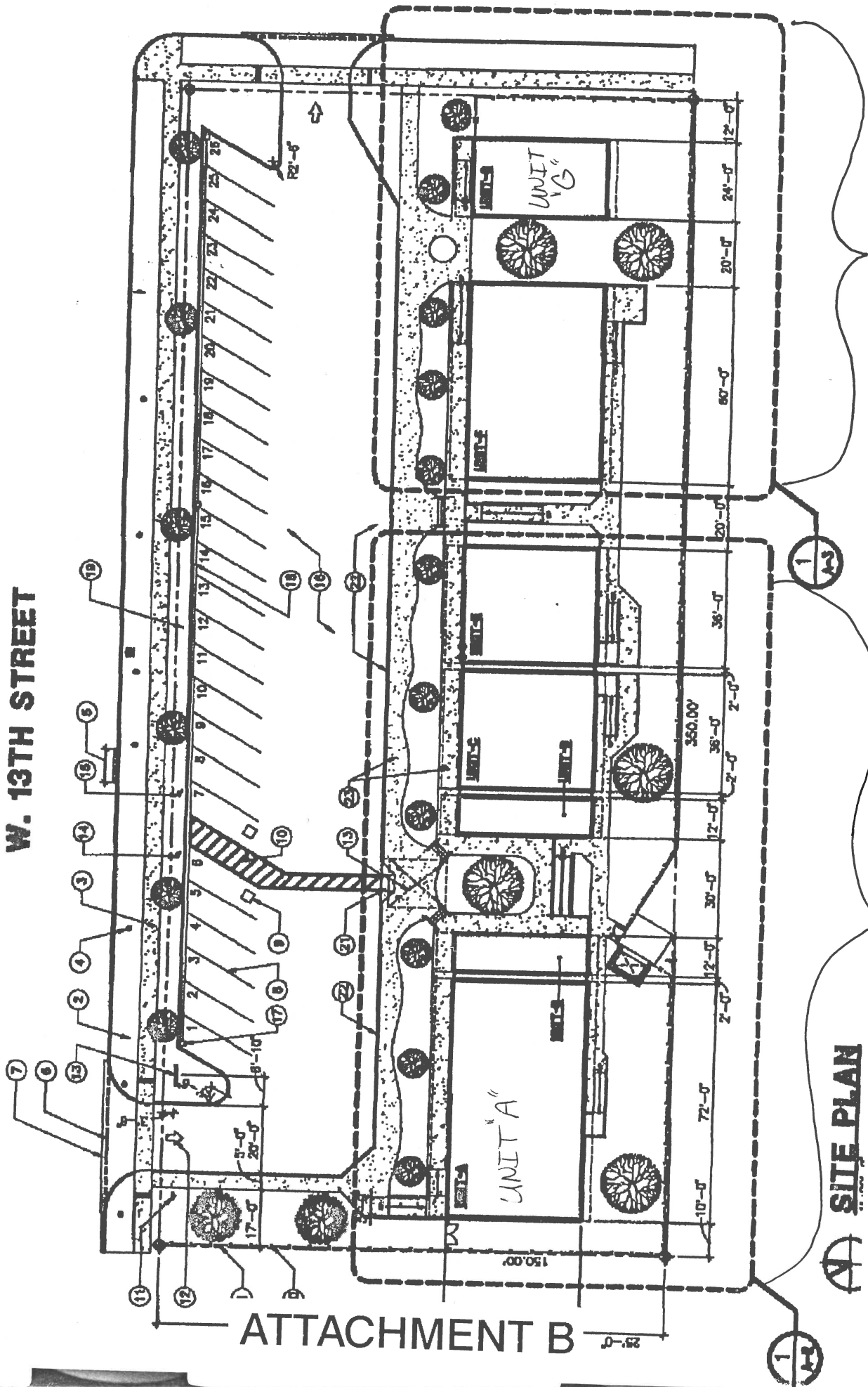
- G. The City of Merced has conducted an environmental review of the project in accordance with the California Environmental Quality Act, and a Draft Negative Declaration (i.e., no significant adverse effects were found) is being recommended (see Attachment A).

js/P7:SR97-20

Attachments



W. 13TH STREET



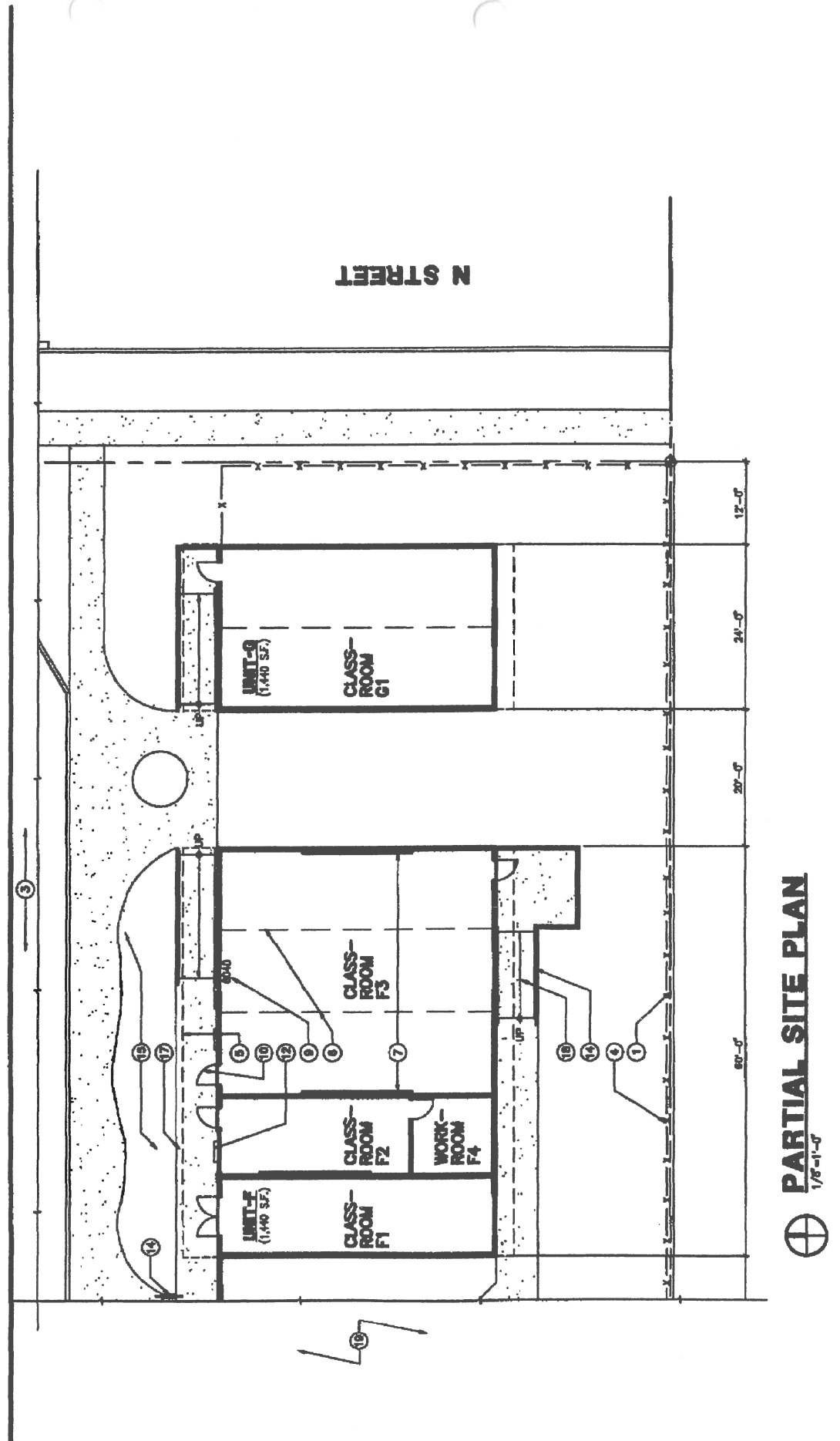
ATTACHMENT B

SITE PLAN

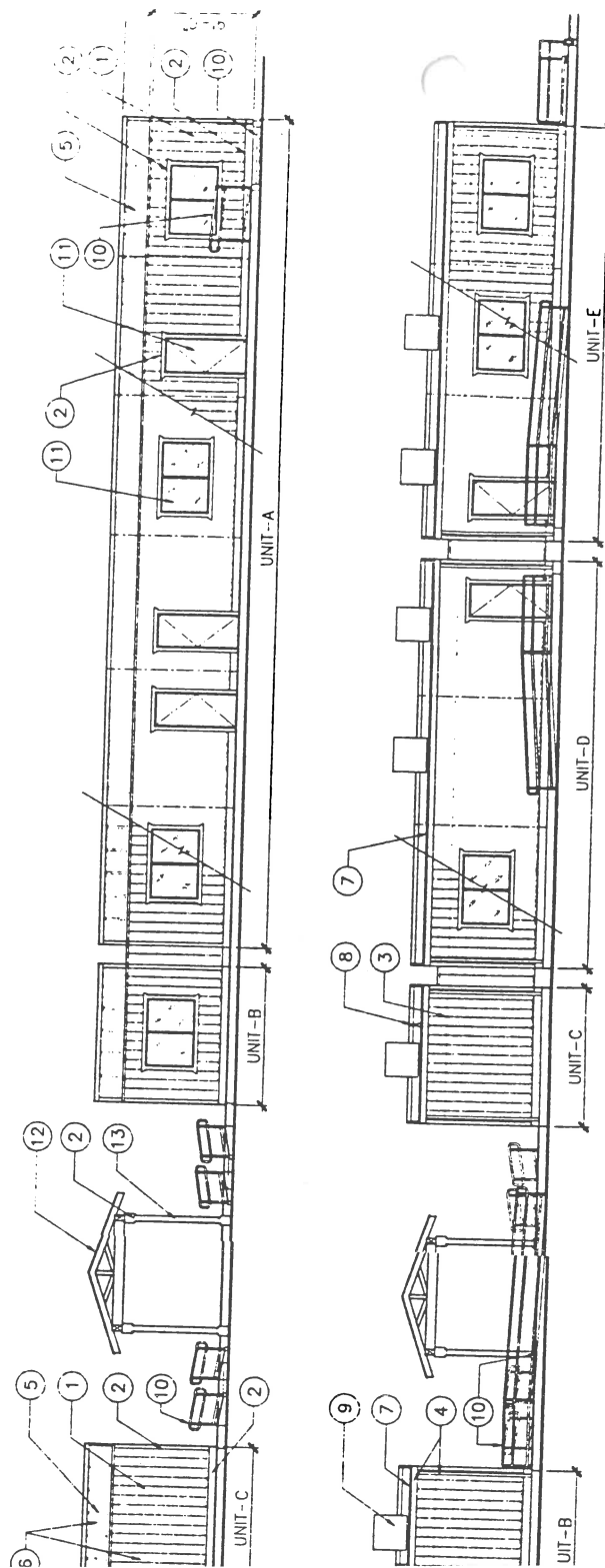
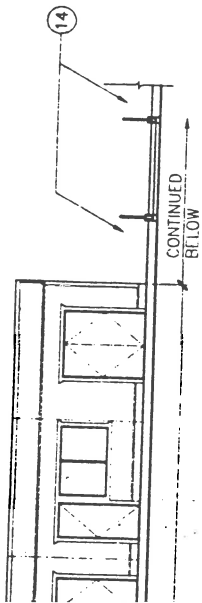
SEE PAGE 3

SEE PAGE 2









MERCED CITY  
PLANNING DEPARTMENT  
(To Be Completed By Project Planner)

TYPE OF PROPOSAL: EDUCATIONAL CAMPUSINITIAL STUDY NO.: 97 - 09DATE RECEIVED: JUNE 3, 1997LOCATION: 732 W. 13TH STREET

ASSESSOR'S PARCEL NUMBER(S):

031-311-02 thru 07(SEE ATTACHED PUBLIC HEARING NOTICE & MAP.)I. Initial Findings

- (A) The proposal is a project as defined by CEQA guidelines. Section 15378.
- (B) The project is not a ministerial or emergency project as defined under CEQA guidelines. Sections 15369 and 15359.
- (C) The project is therefore discretionary and subject to CEQA. Section 15357.
- (D) The project is not Categorically Exempt.
- (E) The project is not Statutorially Exempt.
- F. Therefore, an Environmental Checklist has been required and filed.
- G. Environmental review has previously been done on this site for a related project and:
1. The current project is similar enough that the previous review remains pertinent (reference \_\_\_\_\_).
  2. The current project contains changes sufficient in nature to require a modification of previous review (reference \_\_\_\_\_).

II. Checklist Findings

- A. The checklist, as prepared by the applicant, is rated as follows:
- Unsatisfactory 1 2 3 4 5 (6) 7 8 9 10 Excellent (If less than 5, reject for resubmittal).
- B. An on-site inspection was made by this reviewer on 6-25-97.
- C. The checklist was reviewed on 6-25-97.

# ATTACHMENT D

III. Environmental Impacts: Will the proposed project result in significant impacts in any of the listed categories? Significant impacts are those which are substantial, or potentially substantial, changes that may adversely affect the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant. (Section 15372, State CEQA Guidelines. Appendix G of the Guideline contains examples of possible significant effects.)

(A narrative description of all "yes" and "maybe" answers is provided on attached sheets).

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
A. <u>Earth</u> . Will the proposal result in:			
1. Unstable earth conditions or in changes in geologic substructures?	___	___	___✓
2. Significant disruption, displacement, compaction or overcovering of the soil?	___	___	___✓
3. Significant change in topography or ground surface relief features.	___	___	___✓
4. Any destruction, covering or modification of any unique geologic or physical features?	___	___	___✓
5. Any increase in wind or water erosion of soils, either on or off the site?	___	___	___✓
6. Any changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	___	___	___✓
7. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?	___	___	___✓
B. <u>Air</u> . Will the proposal result in:			
1. Substantial air emissions or deterioration of ambient air quality?	___	___✓	___
2. The creation of objectionable odors?	___	___	___✓

3. Substantial alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?    \_\_\_    \_\_\_    ✓

C. Water. Will the proposal result in:

1. Any changes in the course or direction or rate of water movement of fresh waters?    \_\_\_    \_\_\_    ✓
2. Significant changes in absorption rates, drainage patterns, or the rate and amount of surface runoff?    \_\_\_    \_\_\_    ✓
3. Substantial alterations to the course of low flood waters?    \_\_\_    \_\_\_    ✓
4. Any change in the amount of surface water in any water body?    \_\_\_    \_\_\_    ✓
5. Any discharge into surface waters, or any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?    \_\_\_    \_\_\_    ✓
6. Any alteration of the direction or rate of flow of ground waters?    \_\_\_    \_\_\_    ✓
7. Substantial change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?    \_\_\_    \_\_\_    ✓
8. Substantial reduction in the amount of water otherwise available for public water supplies?    \_\_\_    \_\_\_    ✓
9. Any exposure of people or property to water related hazards such as flooding or tidal waves?    \_\_\_    \_\_\_    ✓

CHECK THE CITY'S FEDERAL FLOOD MAPS. THE SITE IS LOCATED IN ZONE(S) Zone AO  
(Depth 1) Flood depths of 1 to 3 feet.

D. Plant Life. Will the proposal result in:

1. Any change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, and aquatic plants)?    \_\_\_    \_\_\_    ✓
2. Any reduction of the numbers of any unique, rare or endangered species of plants?    \_\_\_    \_\_\_    ✓

3. Any introduction of new species of plants into the Merced urban area, or in a barrier to the normal replenishment of existing species? \_\_\_\_\_ ✓

4. Substantial reduction in acreage of any agricultural crop? \_\_\_\_\_ ✓

E. Animal Life. Will the proposal result in:

1. Any change in the diversity of species, or number of any species of animals (including birds, land animals, including reptiles, fish, or insects)? \_\_\_\_\_ ✓

2. Any reduction of the numbers of any unique, rare or endangered species of animals? \_\_\_\_\_ ✓

3. Any introduction of new species of animals into an area, or in a barrier to the normal replenishment of existing species? \_\_\_\_\_ ✓

4. Significant deterioration to existing fish or wildlife habitat? \_\_\_\_\_ ✓

F. Noise. Will the proposal result in a significant increase in:

1. Existing noise levels? \_\_\_\_\_ ✓

2. Exposure of people to severe noise level? \_\_\_\_\_ ✓

WHICH NOISE AREA(S) IS THE PROJECT LOCATED IN ON THE CASTLE AIR FORCE BASE NOISE CONTOUR MAP? 70-75 Ldn 30db Reduction Required

G. Light and Glare. Will the proposal produce significant new light or glare? \_\_\_\_\_ ✓

H. Land Use. Will the proposal result in a significant alteration of the present or planned land use of an area? \_\_\_\_\_ ✓

I. Natural Resources. Will the proposal result in any increase in the rate of use of any natural resources? \_\_\_\_\_ ✓

WHAT TYPE(S) OF SOIL EXISTS IN THE PROJECT AREA (REFER TO CALIFORNIA DEPARTMENT OF CONSERVATION USDA SOIL CONSERVATION WORKING MAP): Urban  
and built up lands.

- J. Risk of Upset. Will the proposal involve:
1. A risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident? ☐ ☐ ☒
  2. Possible interference with an emergency response plan or an emergency evacuation plan? ☐ ☐ ☒
- K. Population. Will the proposal significantly alter the location, distribution, density, or growth rate of the human population of an area? ☐ ☐ ☒
- L. Housing. Will the proposal significantly affect existing or create a demand for additional housing? ☐ ☐ ☒
- M. Transportation/Circulation. Will the proposal result in:
1. Generation of substantial additional vehicular movement? ☐ ☐ ☒
  2. Substantial effects on existing parking facilities, or demand for new parking? ☐ ☐ ☒
  3. Substantial impact upon existing transportation systems? ☐ ☐ ☒
  4. Significant alterations to present patterns of circulation or movement of people and/or goods, or to waterborne, rail or air traffic? ☐ ☐ ☒
  5. Significant increase in traffic hazards to motor vehicles, bicyclists or pedestrians? ☐ ☐ ☒
- N. Public Services. Will the proposal have any significant effect upon, or result in a substantial need for new or altered governmental services in any of the following areas:
1. Fire services, police services, schools, libraries or other governmental services? ☐ ☐ ☒
  2. Parks or other recreational facilities? ☐ ☐ ☒
  3. Maintenance of public facilities, including roads? ☐ ☐ ☒
- O. Energy. Will the proposal result in:
1. Significantly increased use of substantial amounts of fuel or energy. ☐ ☐ ☒



2. A substantial increase in demand upon existing sources of energy. \_\_\_\_\_ ✓
3. The required development of new energy sources? \_\_\_\_\_ ✓
- P. Utilities. Will the proposal result in a need for new systems, or substantial alterations to the following utilities:
1. Gas. \_\_\_\_\_ ✓
2. Water. \_\_\_\_\_ ✓
3. Electricity. \_\_\_\_\_ ✓
4. Telephone. \_\_\_\_\_ ✓
5. Other(s): \_\_\_\_\_ ✓
- Q. Human Health. Will the proposal result in the creation of any health hazard or exposure of people to potential health hazards (excluding mental health)? \_\_\_\_\_ ✓
- R. Aesthetics. Will the proposal result in:
1. The obstruction of any scenic vista or view open to the public? \_\_\_\_\_ ✓
2. The creation of an aesthetically offensive site open to public view? \_\_\_\_\_ ✓
- S. Recreation. Will the proposal result in:
1. A significant impact upon the quality or quantity of existing recreational opportunities? \_\_\_\_\_ ✓
2. A significant level of use (or overuse) of existing recreational facilities? \_\_\_\_\_ ✓
- T. Cultural Resources. Will the proposal result in:
1. Alteration of, or the destruction of, a prehistoric or historic archaeological site? \_\_\_\_\_ ✓
2. Adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object? \_\_\_\_\_ ✓
- U. Mandatory Findings of Significance.
1. Does the project have the potential to:
- a. Significantly degrade the quality of the environment? \_\_\_\_\_ ✓



- |    |                                                                                                                                                                                                                                                                                                    |       |       |   |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|---|
| b. | Substantially reduce the habitat of a fish or wildlife species?                                                                                                                                                                                                                                    | _____ | _____ | ✓ |
| c. | Cause a fish or wildlife population to drop below self-sustaining levels?                                                                                                                                                                                                                          | _____ | _____ | ✓ |
| d. | Threaten to eliminate a plant or animal community?                                                                                                                                                                                                                                                 | _____ | _____ | ✓ |
| e. | Reduce the number or restrict the range of a rare or endangered plant or animal?                                                                                                                                                                                                                   | _____ | _____ | ✓ |
| f. | Eliminate important examples of the major periods of California history or prehistory?                                                                                                                                                                                                             | _____ | _____ | ✓ |
| 2. | Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)          | _____ | _____ | ✓ |
| 3. | Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.) | _____ | _____ | ✓ |
| 4. | Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?                                                                                                                                                           | _____ | _____ | ✓ |



V. DISCUSSION OF ENVIRONMENTAL EVALUATION

A. EARTH

Construction of the proposed project will not result in creating unstable earth conditions or cause changes in geologic substructures. The amount of soil disruption will greatly depend upon the buildings' design and layout, but is not expected to result in a significant change in topography. Less than 500 cubic yards of earth will be moved. Common practice during construction is to water down the site twice a day to minimize the dust flow.

B. AIR

Short-term impacts may occur as the potential air quality impacts will be increased during project construction. The grading of the site and demolition of the existing church and two houses will raise dust. To minimize dust emission, standard practice is to water the site two times per day. This measure is typically effective by reducing dust emissions by one-half.

Project development will not generate significant long-term air quality impacts. The proposed development is located in an area with easy access to Highways 59, 99 and 140. According to the San Diego Association of Governments Traffic Generation Study, approximately 154 vehicle trips per day may be generated by the project. It is anticipated, however, that the majority of the high school students will be bused to the site. It is unlikely that the trips related to, or generated by, this project will result in the deterioration of ambient air quality.

The project will not result in the creation of objectionable odors or alter air climate either locally or regionally. The Merced Municipal Code requires one parking lot tree for every six parking spaces. The trees in combination with other proposed landscaping will assist in keeping the site cool during warm periods of the year.

C. WATER

Operation of the educational facility (ROP) is not water intensive. Approximately 3,000 gallons of water per day will be consumed for domestic and landscaping uses. Regionally, this will not have a significant impact upon the availability of groundwater.



The City has adopted a water conservation ordinance which limits the days, time and purposes for which water may be used outside of domestic consumption. Water will be supplied by the City of Merced.

D. PLANT LIFE

There is an existing church (corner lot) and two dilapidated houses (west of the church) slated for demolition. Additionally, there are four vacant parcels (west of the two houses) which previously had houses on them, that comprise the subject site. The subject site is surrounded by urbanized land uses, which include Hwy. 99 to the north, residential to the west, residential and educational to the south and educational/offices to the east.

A field inspection of the site did not indicate any unusual species of plant life. Given the adjacent urban land uses and the proximity to major streets, no form of unique, rare, or endangered species of plant life could be sustained on the subject site. Therefore, the City shall issue a DI MINIMIS Impact Finding stating the project will not adversely impact any type of rare or endangered plant life.

E. WILDLIFE

The subject site is surrounded by urbanized land uses which include residential and educational facilities. A field inspection of the site did not indicate any unusual wildlife. Given the urban land use and proximity to major streets, no form of unique, rare, or endangered species of wildlife could be sustained on the subject site. Therefore, the City shall issue a DI MINIMIS Impact Finding stating the project will not adversely impact any type of rare or endangered wildlife.

F. LIGHT AND GLARE

Additional light will be introduced to the adjacent single-family residences to the west and south from fixtures installed above all building doors. Also proposed are two parking lot lights. New light fixtures are typical to new facility construction and will be used for security purposes. All lighting related details, locations, strength, etc., shall be reviewed at the building permit stage. This impact is less than significant upon the environment and surrounding residential uses.

G. LAND USE

According to the Zoning Ordinance, public and quasi-public buildings and uses of a recreational, educational, religious, cultural, or public service type could locate within a High



Medium Residential (R-3-1.5) zone providing the use is established in the context of a conditional use permit.

The design of the project includes landscaping along W. 13th Street, "N" Street and around the perimeter of the buildings.

#### H. TRANSPORTATION/CIRCULATION

The project site is accessed by West 13th Street and "N" Street. The project includes an entrance driveway on West 13th Street. The project also has an exit drive on "N" Street near the intersection of West 13th and "N" Streets. It is expected that for the most part project related trips will utilize West 13th Street given its' direct connection to State Highway 99 and Routes 59 and 140.

The proposed project is anticipated to draw students from a regional area utilizing the State highway system entering and exiting Merced. A percentage of students will also live locally. It is further anticipated that a percentage of students will use the public transit system. Further, the project will provide its own bus transportation from and to certain areas. Operating times for the project will occur during daytime hours (8:00 a.m. - 6:00 p.m.), and evening hours (6:00 - 9:30 p.m.), Monday - Friday. Daytime enrollment will include approximately 40 adult students and 50 high school students. Evening classes will include approximately 20 adults for a total of 110 students. There will be 11 staff present during the daytime and two staff during evening classes.

Based on these enrollment levels, it is expected that the project will generate approximately 154 Average Daily Trips (ADTs). This calculation is based on 1.4 vehicle trips per student as determined by the San Diego Association of Governments (SANDAG) Guide of Vehicular Traffic Generation Rates for Average Daily Trips (ADT'S), 1993; and The Institute of Traffic Engineers, Trip Generation Report. The 1.4 trip generation rate, factors in trips made by staff. The 154 ADT's do not reflect a reduction for any student use of public/project transit.

The Major Investment Study, Merced County Association of Governments (MCAG) includes plans for a "one-way" couplet system for West 13th and 14th Streets (3 travel lanes each direction). In the future, West 13th Street will carry eastbound traffic and West 14th Street will carry westbound traffic. Concurrent with the phasing of the couplet system, the Highway 99 on and off-ramps located between "G" and "V" Streets, will be modified/upgraded. The one-way system will substantially increase the capacity of the roadway segments.

Traffic model data from the Merced Vision 2015 General Plan, Program Environmental Impact Report (EIR), Appendix "G",



indicates the segment of East 13th Street between "R" and "M" Streets to have been operating at a Level of Service (LOS) C+ in 1990, carrying approximately 10,467 ADT's. The traffic model data contained within "Appendix G" projects that West 13th (3 eastbound travel lanes), will be operating at LOS C+ in 2015 with the planned one-way couplet system.

Based on a California Department of Transportation ADT standard inflation factor of 2%-3% over 7 years, it is estimated that the "M" to "R" segment of West 13th Street is presently carrying 11,932 to 12,665 ADT's. The capacity of a two lane collector street such as West 13th Street (frequency of intersecting roads, parking), is approximately 16,000 ADT. Using 12,665 ADT's, the roadway segment is presently operating at 79% of capacity, or LOS C- (Highway Capacity Manual, Special Report 209, Transportation Research Board). The Merced Vision 2015 General Plan determines an acceptable roadway/intersection LOS to be "D" and above. Level of Service E or F would be unacceptable. The estimated trips to be generated by the current project equates to approximately 1.2% of present ADT's on West 13th Street, and .09% of capacity before implementation of the one-way couplet system.

Given the entrance driveway on West 13th Street, current and projected capacity of the roadway, and the low percentage of contribution of traffic expected from the project, the adjacent collector street is more than adequate to serve the project. Traffic and circulation impacts from this project are deemed to be less than significant.

#### I. MANDATORY FINDINGS

The project does not have the potential to significantly degrade the quality of the environment. No plant communities or wildlife habitat would be removed or damaged as part of the project. It is not anticipated that any prehistoric or historic archaeological resources would be affected by this project. There are no known endangered or rare species of plant, animal or wildlife within the urban City limits of Merced. The project site is located within the City limits. No evidence has been presented that would suggest the project has the potential to achieve short-term goals to the disadvantage of long-term environmental goals. There are no impacts related to the project that are expected to cause substantial adverse affects on human beings either directly or indirectly. Based upon the Environmental Review conducted by the Planning Department, staff recommends the project be issued a Draft Negative Declaration.



W. Draft Environmental Determination of Merced City Planning Department

Based upon the evaluation of the Initial Study and environmental information provided by the project proponent, the Merced City Planning Department finds:



The proposed project COULD NOT have a significant effect on the environment, and a DRAFT NEGATIVE DECLARATION has been prepared for public review (see attached).



Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures and/or modifications described in the attached DRAFT MITIGATED NEGATIVE DECLARATION FORM will cause the impacts identified to drop to an insignificant threshold.



I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

June 27, 1997  
Date Sent Out for Public Review

Julie Stirling  
Signature of Project Planner

Paul D. Leach  
Signature of Environmental Coordinator

ls/ERCISFORM

Rev. 9/90



**CITY OF MERCED**  
**Planning Commission**

**Resolution #2417**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of July 23, 1997, held a public hearing and considered Conditional Use Permit (CUP) Application #931 (R-3-1.5), initiated by Booker Lawler Architects, representing Merced County Office of Education, applicant for Gilbert and Diane Chan, Santiago Villegas, and Letha Meadows, property owners, to approve a Regional Occupational Program (R.O.P.) Educational Campus which consists of seven relocatable buildings. This site is generally located on the south side of W. 13th Street between "N" and "O" Streets within a Medium Density Residential (R-3-1.5) zone; also known as Assessor's Parcel Numbers 031-311-02 through 031-311-07; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through G of Staff Report #97-20; and,

**WHEREAS**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Draft Negative Declaration regarding Initial Study #97-09 and approves Conditional Use Permit (CUP) #931 subject to the following conditions:

1. The proposed project shall be constructed/designed as shown on Exhibit I (site plan) and Exhibit II (elevations) -- Attachments B and C of Staff Report #97-20.
2. All conditions contained in Resolution #1249 ("Standard Conditional Use Permit Conditions") shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. The applicant shall apply for a lot merger combining Lots 1 through 7 of Block 254 prior to building permit issuance.
6. Public improvements required include, but are not limited to:
  - a. Driveways per City standard D-7;
  - b. All sidewalks are to be replaced per City standard SCG-1;
  - c. Existing driveways not proposed for the project are to be closed;
  - d. Refuse enclosures per City standards R-2 and R-4;
  - e. A reduced pressure backflow device is required on the water service;



- f. Installation of a wheelchair ramp is required on the southwest corner of W. 13th and "N" Streets;
  - g. The on-site catch basin shall be connected to the 13th Street curb face per City standard SD-5 (as dry wells are not acceptable);
  - h. The existing water and sewer services that are no longer used shall be abandoned per City standards.
- 7. Uniform Fire Codes required for this project include a fire alarm system, and if classrooms are 1,000 square feet or more, then two exits are required to be equipped with panic hardware.
- 8. The applicant shall provide a minimum 15-foot landscape planter along the 13th Street frontage. Additional trees (15-gallon placed 30-foot-on-center) or quick growing shrubs (i.e., photinias; 5-gallon placed 5-foot-on-center) are required along the west and east property lines for screening purposes.
- 9. Detailed landscape and irrigation system plans shall be submitted in conjunction with the building permit application. Landscape plans shall indicate species type, size, and location. Drought-resistant plants and water conservation irrigation techniques, such as drip irrigation system, shall be utilized to the greatest extent possible.
- 10. Light fixtures on the building and within the parking lot shall be equipped with hoods and oriented in a manner so as not to spill over onto the streets or adjacent parcels.
- 11. Demolition of the existing structures will require a demolition permit through Inspection Services. Prior to issuance of a demolition permit, the applicant must have approval from the San Joaquin Valley Unified Air Pollution Control District.
- 12. A pedestrian gate is required along the south property line between Units E and F (details to be worked out with staff).

Upon motion by Commissioner RIORDAN, seconded by Commissioner SCHILLING and carried by the following vote:

AYES: Commissioners Schilling, Eisenhart, Riordan, Love, Chairman Hinds  
NOES: None  
ABSENT: None  
ABSTAINED: Commissioner Andersen

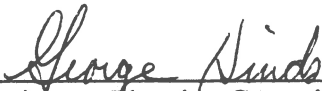


PLANNING COMMISSION RESOLUTION #2417


Page 3

July 23, 1997

Adopted this 23rd day of July, 1997

  
Chairman, Planning Commission of  
the City of Merced, California

ATTEST:

  
Secretary

U/P.RES97/#2417



School District

- ▶ [Gustine Unified School District](#)
- ▶ [Hilmar Unified School District](#)
- ▶ [Le Grand Union Elementary School District](#)
- ▶ [Le Grand Union High School District](#)
- ▶ [Livingston Union Elementary School District](#)
- ▶ [Los Banos Unified School District](#)
- ▶ [McSwain Union Elementary School District](#)
- ▶ [Merced City Elementary School District](#)
- ▶ [Merced County Office of Education](#)
- ▶ [Merced River Union Elementary School District](#)
- ▶ [Merced Union High School District](#)
- ▶ [Merced Community College District](#)
- ▶ [Plainsburg Union Elementary School District](#)
- ▶ [PlanadaElementary School District](#)
- ▶ [Snelling-Merced Falls Union Elementary School District](#)
- ▶ [Weaver Union School District](#)
- ▶ [Winton School District](#)

Board Meeting Times: 3rd Monday @ 3:00pm

Name	Trustee Area	Term Expires
Hanks, Dennis	1	2018
Chavez, Chris	2	2018
Mollart, Stan	3	2020
Honore, Fred	4	2020
Bates, Tom	5	2018

## Staff

Name	Title	Phone
Tietjen, Steve M., Ed.D.	County Superintendent of Schools	381-6601
Campos, Yolanda	Senior Executive Assistant to the Superintendent	381-6603
Chavez, Eva	Assistant Superintendent-Human Resources	381-6627
Coston, Susan	Assistant Superintendent-Special Education	381-6711
Hendricks, Christie	Assistant Superintendent-Early Education	381-6794 x6126
Magneson, John	Assistant Superintendent-Educational Services	381-6634
Riley, Janet	Assistant Superintendent-Business Services	381-6725

## Schools

- **Camp Green Meadows (K-12)**  
7798 White Chief Mountain Road, Fish Camp, CA 93623-0069  
Phone: 559-642-0122 Fax: 559-683-2969  
Principal: Bassett, Robert "Bob"
- **Merced Scholars Charter School (6-12)**  
1850 Wardrobe Avenue, Bldg. H, Merced, CA 95341  
Phone: 209-381-5165 Fax: 209-381-5166  
Principal: Pintor, Mark
- **MCOE Head Start (Preschool)**  
2130 Cooper Avenue, Merced, CA 95348  
Phone: 209-381-5170 Fax: 209-381-5172  
Director: Kaercher, Linda
- **Schelby (Floyd) School (K-12)**  
6738 N. Sultana, Livingston, CA 95334  
Phone: 209-394-1800 Fax: 209-394-7818  
Coordinator: Mitchell, Lissa
- **Valley Community School - MERCED (6-12)**  
1850 Wardrobe Avenue, Merced, CA 95341  
Phone: 209-381-4500 Fax: 209-381-5169  
Principal: Paul, Karla
- **Valley Community School - ATWATER (6-12)**  
1800 Matthew Drive, Atwater, CA 95301  
Phone: 209-381-4550 Fax: 209-381-4551  
Principal: Harkreader, Carrie
- **Valley Community School - LOS BANOS (6-12)**  
715 West H Street, Los Banos, CA 93635  
Phone: 209-827-5600 Fax: 209-827-5624  
Principal: Gattuso, Lori
- **Valley Community School - Independent Study (K-12)**  
1850 W. Wardrobe Avenue, Merced, CA 95341  
Phone: 209-381-4513 Fax: 209-381-4529  
Principal: Paul, Karla
- **Valley Community School - Juvenile Hall (K-12)**  
2840 West Sandy Mush Road, Merced, CA 95341  
Phone: 209-381-1414 Fax: 209-725-3508  
Principal: Dean, Derrek



MERCED COUNTY OFFICE OF EDUCATION  
632 West 13th Street  
Merced, CA 95341  
(209) 381-6600

# ATTACHMENT O

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# California Department of Education

## Search Results

All Schools

District: Merced County Office of Education ✕

19 Schools found

CDS Code ⇅	County ^	District ⇅	School ⇅	School Type ⇅	Sector Type ⇅	Status ⇅
24102496103808	Merced	Merced County Office of Education	<u>Career Opportunity Center</u>	County Community	Public	Merged
24102490138032	Merced	Merced County Office of Education	<u>Come Back Charter</u>	High Schools (Public)	Public	Active
24102496071997	Merced	Merced County Office of Education	<u>Communicatively Handicapped</u>	Special Education Schools (Public)	Public	Merged
24102496068498	Merced	Merced County Office of Education	<u>Floyd A. Schelby</u>	Special Education Schools (Public)	Public	Active
24102496092753	Merced	Merced County Office of Education	<u>Juvenile Hall School</u>	Juvenile Court Schools	Public	Merged
24102496103113	Merced	Merced County Office of Education	<u>Learning Handicapped-Planada</u>	Special Education Schools (Public)	Public	Closed
24102496101869	Merced	Merced County Office of Education	<u>Learning Handicapped/Spec.Day</u>	Special Education Schools (Public)	Public	Merged

24102492430056	Merced	Merced County Office of Education	<u>Merced County Juvenile Court</u>	Juvenile Court Schools	Public	Active
24102496069199	Merced	Merced County Office of Education	<u>Merced County Special Education</u>	Special Education Schools (Public)	Public	Active



<b>CDS Code</b> ⇅	<b>County</b> ^	<b>Office of Education</b> ⇅	<b>School</b> ⇅	<b>School Type</b> ⇅	<b>Sector Type</b> ⇅	<b>Status</b> ⇅
24102490106518	Merced	Merced County Office of Education	<u>Merced Scholars Charter</u>	K-12 Schools (Public)	Public	Active
24102492430023	Merced	Merced County Office of Education	<u>Sierra High (Seh)</u>	Special Education Schools (Public)	Public	Merged
24102496103931	Merced	Merced County Office of Education	<u>Sierra Junior High (Seh)</u>	Special Education Schools (Public)	Public	Merged
24102496068480	Merced	Merced County Office of Education	<u>Sierra Schools (Sed)</u>	Special Education Schools (Public)	Public	Merged
24102492430171	Merced	Merced County Office of Education	<u>Valley Atwater Community</u>	County Community	Public	Active
24102492430155	Merced	Merced County Office of Education	<u>Valley Community Day (7-12)</u>	District Community Day Schools	Public	Closed
24102496116644	Merced	Merced County Office of Education	<u>Valley Community Day (K-6)</u>	District Community Day Schools	Public	Closed
24102490102244	Merced	Merced County Office of Education	<u>Valley Livingston Community Day</u>	District Community Day Schools	Public	Closed
24102492430163	Merced	Merced County Office of Education	<u>Valley Los Banos Community</u>	County Community	Public	Active

24102492430148	Merced	Merced County Office of Education	<u>Valley Merced Community</u>	County Community	Public	Active
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19 Schools found



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**Questions: CDS Administration | [cdsadmin@cde.ca.gov](mailto:cdsadmin@cde.ca.gov) | 916-327-4014**

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SURVEYOR'S STATEMENT  
This map correctly represents a survey made  
by me or under my direction.



DR. BY: CARDOSO
DATE: 10/8/18
CH. BY:
DATE:
SCALE: 1"= 250'

File No.	Sheet
----------	-------

1

1 of

# SITE PLAN



*City of Merced*  
"Gateway to Yosemite"

**DEVELOPMENT SERVICES**  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846



**RESOLUTION NO. 2018- 71**

**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 AND REMANDING  
THE MATTER BACK TO THE PLANNING  
COMMISSION FOR CONSIDERATION AND  
TAKING OF EVIDENCE RELATED TO THE USE  
OF THE WOLFE EDUCATION CENTER AND  
THE ADJOINING PARCEL TO DETERMINE IF  
EITHER PARCEL MEETS THE DEFINITION OF  
A SCHOOL AS SET FORTH IN THE ORDINANCE**

WHEREAS, the Planning Commission of the City of Merced ("Planning Commission") at its meetings of September 18 and September 19, 2018 held public hearings, and considered 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 (as shown on the map at Exhibit A); also known as Assessor's Parcel Number 031-073-012; and

WHEREAS, after hearing all of the evidence and testimony on September 18, 2018, the Planning Commission re-opened the public hearing on September 19, 2018 at the request of Medallion Wellness and its agents ("Medallion") to hear additional testimony; and

WHEREAS, on September 19, 2018, the Planning Commission, after hearing all evidence and testimony and after exercising its independent judgment, the Planning Commission adopted Resolution #4008 adopting a Categorical Exemption regarding Environmental Review #18-27 (Categorical Exemption) and approving Commercial Cannabis Business Permit #18-14R subject to the findings and conditions attached thereto; and

WHEREAS, the Appellant (Medallion) appealed the Planning Commission decision to approve Commercial Cannabis Business Permit #18-14R; and

**ATTACHMENT R**



WHEREAS, the Appellant (Medallion) has not appealed the Planning Commission's decision to adopt a Categorical Exemption regarding Environmental Review #18-27 (Categorical Exemption); and

WHEREAS, the City Council held a noticed public hearing on October 25, 2018, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application; and

WHEREAS, based upon the lack of evidence in the Planning Commission record, the City Council reversed the decision of the Planning Commission and remanded the matter back to the Planning Commission.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED  
DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS  
FOLLOWS:

**SECTION 1. COMMERCIAL CANNABIS BUSINESS PERMIT.**  
Based upon the lack of evidence in the Planning Commission record, the City Council hereby reverses the decision of the Planning Commission and remands Commercial Cannabis Business Permit #18-14R back to the Planning Commission for consideration and taking of evidence related to the use of the Wolfe Education Center and the adjoining parcel to determine if either parcel meets the definition of school as set forth in the Ordinance.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 25th day of October 2018, by the following vote:

**AYES:** 7               **Council Members:** BELLUOMINI, BLAKE, MARTNEZ,  
MCLEOD, MURPHY, PEDROZO, SERRATTO

NOES: 0                      Council Members: NONE


ABSENT: 0 Council Members: NONE

ABSTAIN: 0 Council Members: NONE

APPROVED:

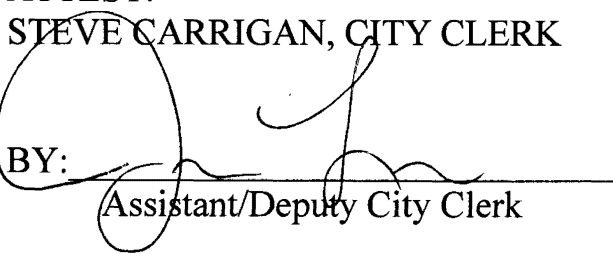


APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK


BY:

  
\_\_\_\_\_  
Assistant/Deputy City Clerk

(SEAL)

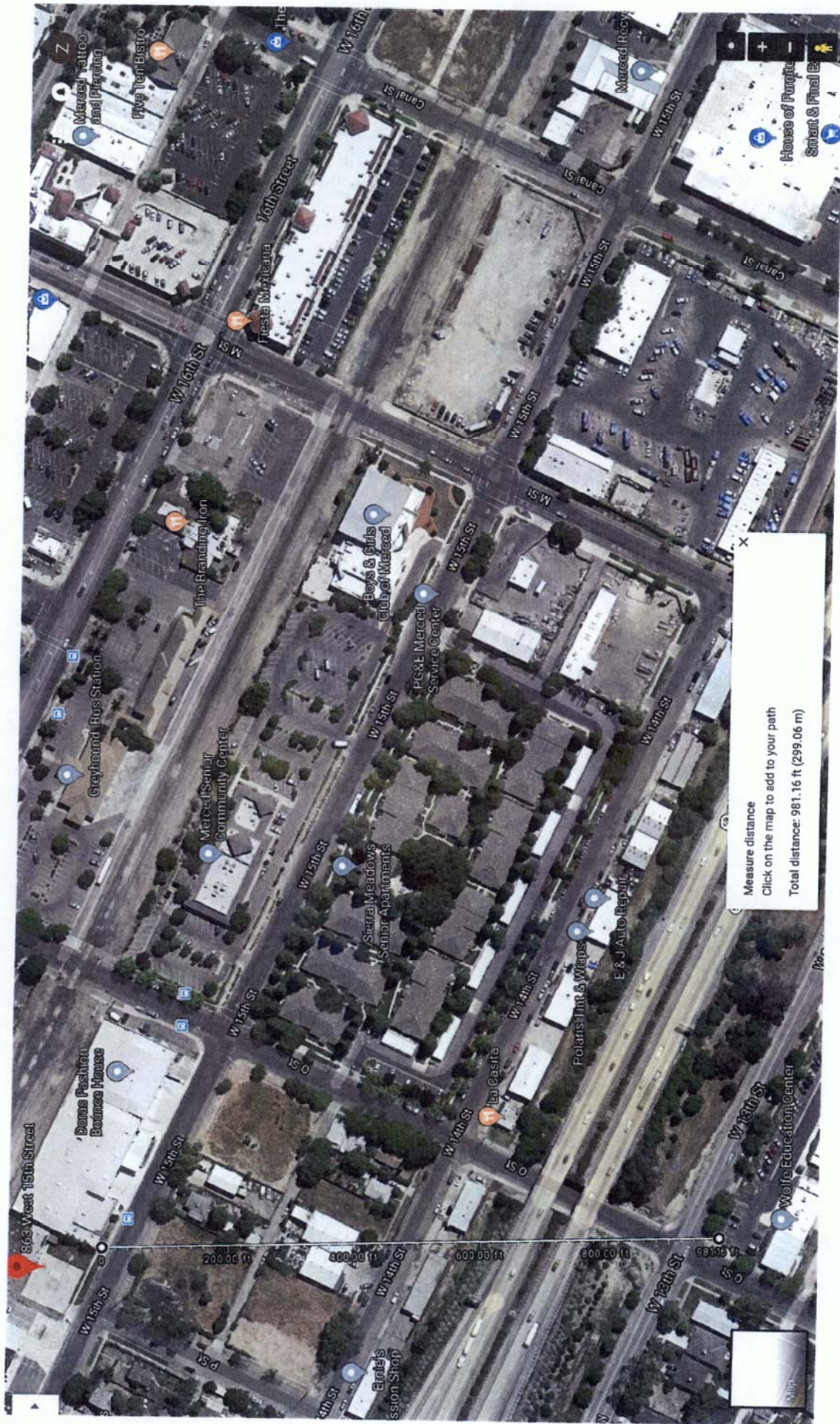


APPROVED AS TO FORM:

 11-7-18  
\_\_\_\_\_  
City Attorney      Date



**'Exhibit A'**  
**Google Maps Screen Shot 1**





DOUGLAS SMURR  
DSMURR@GRSM.COM  
DIRECT DIAL: (916) 830-6532

**GORDON & REES**  
**SCULLY MANSUKHANI**

ATTORNEYS AT LAW  
3 PARKCENTER DRIVE  
SUITE 200  
SACRAMENTO, CA 95825  
WWW.GRSM.COM

November 8, 2018

**VIA E-MAIL**

Michael Hren  
Principal Planner, Planning Division  
City of Merced  
hrenm@cityofmerced.org

**Harvest of Merced, LLC's Brief Submitting Evidence and Providing Legal Analysis  
Supporting Approval of Commercial Cannabis Business Permit #18-14R**

Dear Mr. Hren and Planning Commissioners:

Please allow this correspondence to serve as Harvest of Merced, LLC's ("Harvest") brief presenting evidentiary facts and legal arguments supporting approval of Commercial Cannabis Business Permit #18-14R. This brief and its related exhibits are submitted in regard to the Planning Commission's November 14, 2018 Public Hearing to determine and make a finding of fact whether: (1) the properties located at 732 West 13th Street [APN 031-313-012; Lot 7 of 12]; (2) and 760 West 13th Street [APN 031-313-013; Lot 8 of 12] meet the definition of 'school' per Merced Ordinance #2480, and (3) whether the property located at 863 W. 15th Street is within 1,000 feet of a school. The properties on West 13<sup>th</sup> Street that are in question encompass portions of the Wolfe Educational Center ("Wolfe Center").

**I  
THE RECORD WILL SHOW THE COMMISSION'S ORIGINAL DECISION  
APPROVING THE HARVEST PERMIT WAS THE CORRECT DECISION  
AND THAT THE ONLY WAY THIS BODY COULD DENY HARVEST ITS PERMIT  
WOULD BE TO RE-WRITE THREE KEY PROVISIONS OF THE MERCED CITY  
CODE**

The substantial evidence of record in this matter fully supports the Planning Commission's original decision approving the Harvest Commercial Cannabis Business Permit #18-14R. The evidence and legal reasoning conclusively demonstrate that the Planning Commission's original decision approving the Harvest permit was the correct decision and that the only way this body could deny Harvest its permit would be to re-write three key elements of the Merced City Code.

**ATTACHMENT S**

ALABAMA • ARIZONA • CALIFORNIA • COLORADO • CONNECTICUT • DELAWARE • FLORIDA • GEORGIA • ILLINOIS  
KENTUCKY • MARYLAND • MASSACHUSETTS • MICHIGAN • MISSOURI • MONTANA • NEBRASKA • NEVADA • NEW JERSEY  
NEW YORK • NORTH CAROLINA • OHIO • OKLAHOMA • OREGON • PENNSYLVANIA • RHODE ISLAND • SOUTH CAROLINA  
SOUTH DAKOTA • TEXAS • UTAH • VIRGINIA • WASHINGTON • WASHINGTON, DC • WEST VIRGINIA • WISCONSIN

## II

### **FIRST, THIS BODY WOULD NEED TO REWRITE MERCED CODE SECTION 20.44.170(E)(3)(F) DEFINING WHAT CONSTITUTES A SCHOOL BY STRIKING OUT THE K-12 INSTRUCTION REQUIREMENT**

First the Planning Commission would need to rewrite the Merced code defining what constitutes a school by drawing a line through and completely doing away with its most meaningful portion: “providing instruction in kindergarten or any grades 1 to 12 inclusive”.

Merced Municipal Code Section 20.44.170(E)(3)(f) refers to California Health and Safety Code Section 11362.768 to define the term “school.” The California Health and Safety Code Section 11362.768(h) defines “school” as follows:

For purposes of this section, “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. (emphasis added)

#### **A. Providing K-12 Instruction:**

The above mentioned definition of “school” is composed of two key elements: (1) “providing instruction in kindergarten or any of grades 1 to 12 inclusive”; and (2) “any public or private school.”

As for the phrase “providing instruction in kindergarten or any grades 1 to 12 inclusive” this phrase is a term of art that has acquired a peculiar and appropriate meaning in the educational field and in California law. Commonly referred to as “K-12 instruction,” this term refers to children from the ages of 5 to 18 years of age who receive instruction leading to a high school diploma upon completing grade 12.

According to California Civil Code Section 13, phrases that have acquired a peculiar and appropriate meaning “are to be construed according to such peculiar and appropriate meaning or definition.” (California Civil Code Section 13). Furthermore, “particular expressions qualify those which are general.” (California Civil Code Section 3534). As a result, the acquired meaning of the phrase K-12 instruction as set forth above must be applied to qualify the term ‘school.’

#### **B. Any Public or Private School:**

The term ‘school’ as set forth in Merced Municipal Code Section 20.44.170(E)(3)(f) lacks clarity. Simply put, it is a circular definition that merely defines the term “school” by qualifying it by the K-12 instruction expression. As a result, it is necessary to look elsewhere in order to find a proper and useful definition of the term “school.”

According to the California Department of Education (“CDE”), it provides the following definition of the term “school” for purposes of managing school and program information. As



stated on its website, the CDE provides this information with the hope to . . . “List the essential attributes that define a school such that it is possible to distinguish schools from non-school entities.” (a true and correct printout of the pertinent portions of the CDE website is attached hereto marked as Exhibit 1). The CDE definition of “school” is as follows:

The term "school" is used to refer to all educational institutions that have the following characteristics: (1) Have one or more teachers to give instruction; (2) Have an assigned administrator; (3) Are based in one or more buildings; and (4) Contain enrolled or prospectively enrolled students.

(See, <https://www.cde.ca.gov/ds/si/ds/dos.asp>)

Importantly, the CDE differentiates between whether a given entity is a school or a program. Once again according to its website (<https://www.cde.ca.gov/ds/si/ds/dos.asp>), the CDE states the following:

“Is it a Program, or is it a School?”

In determining whether a given entity is a school or a program, consider the following questions:

Is the educational component of the entity secondary to its primary purpose, which is other than education?

Do students, who are enrolled in the entity, remain members of the school that referred them?

Do all students enroll on a part-time basis?

If the answer to any of those three questions is yes: This entity is not a school, and it may be a program.

Next, consider these questions:

Except for State Special Schools, can the entity, if it accommodates grade twelve students, grant a diploma to its graduates?

Do the students have full access to all of the facilities and amenities of the entity?

If the answer to either of those two questions is no: This entity is not a school, and it may be a program.” (<https://www.cde.ca.gov/ds/si/ds/dos.asp>).

Applying these factors to the Wolfe Center, the evidence of record conclusively proves that the Wolfe Center is not a school. Rather, the Wolfe Center is an entity that hosts “stand-alone” programs, as the following evidence clearly demonstrates. According to an E-mail from the Coordinator of the Merced County Office of Education Daphne Post (a true and correct copy of the E-mail is attached hereto marked as Exhibit 3) the Wolfe Center “. . . **is a location and not an actual entity.**” (Exhibit 3, emphasis added). Additionally, in her E-mail Ms. Post noted:

“The Wolfe Educational Center houses several different **programs** operated by MCOE:

1. Several MCOE Adult Regional Occupational **Programs** (ROP) to include Medical Assisting, Foundations in Early Education, Computerized Office Technology, Accounting Occupations, Office Administration, and soon, Marketing Customer Services (**serves adults only**, see Exhibit 5)
2. The Workforce Innovation and Opportunity Act (WIOA) MCOE Youth EMPOWER **Program** (**serves adults ages 18-24**, see Exhibit 5)
3. The California Student Opportunity and Access **Program** (Cal-SOAP) for Merced County, operated by MCOE (work with high school aged youth throughout the school year and provide a summer program for high school youth, see Exhibit 5)
4. The Foster Youth Services Coordinating **Program** (FYSCP) for Merced County, operated by MCOE (works with foster youth of all ages and operates several different student centered **programs** and events, see Exhibit 5)
5. One Special Education Classroom for young **adults**, see Exhibit A.

**The ROP, WIOA, Cal-SOAP and FYSCP Programs do not grant high school students a diploma.** As indicated, both the Cal-SOAP and the FYSCP work with high school aged youth throughout the year.” (See, Exhibit 3, emphasis added).

Since the Wolfe Educational Center is merely a location and not an entity, and since it does not grant high school diplomas, nor does it provide K-12 instruction to children, the center is just a host of “stand-alone” educational programs and is not a school pursuant to the definition set forth in Merced Municipal Code Section 20.44.170(E)(3)(f), or the CDE.

The only instruction that takes place on a daily basis relates to **adults** who receive “Special Education K-12 instruction.” By its very terms, “Special Education K-12 instruction” is different from the term “K-12 instruction.” Different rules, standards, and age limits apply to “Special Education K-12 instruction” than those that apply to “K-12 instruction.”

In regard to the Wolfe Center, there is only one Special Education class. It is taught by Marcie Gamble and only to **adults** between the ages of 18 to 22 (See, the November 8, 2018 Response by the Merced County Office of Education to Harvest of Merced's Public Information Request, a true and correct copy of which is embedded into this brief, marked as Exhibit A). These adults are considered “Fifth Year Seniors” for funding purposes but the “Fifth Year Seniors” do not form part of nor do they exist within the term “K-12 instruction.”

According to Exhibit A, Ms. Gamble has 15 **adults** in her Special Education Class that is taught in Room W-13. Importantly, these 15 Special Education adults do not have access to the other facilities or programs at the Wolfe Center such as CalSOAP, Adult Regional Occupational Programs, Workforce Innovation and Opportunity and Access Program, nor the Foster Youth Program.

Since these 15 Special Education adults do not have full access to all of the facilities and amenities of the Wolfe Center, the Wolfe Center is not a ‘school’ as defined by the CDE or by Merced Municipal Code Section 20.44.170(E)(3)(f).



### III

#### **SECOND, THIS BODY WOULD NEED TO REWRITE THE MERCED CODE TO REMOVE THE 'IN EXISTENCE AT THE TIME THE PERMIT IS ISSUED' PROVISIONS OF MERCED CODE SECTION 20.44.170(E)(3)(f)**

Harvest believes that appellant Medallion or others may argue the Wolfe Center hosted K-12 instruction in the past, or may do so in the future. Pursuant to Merced Municipal Code Section 20.44.170(E)(3)(f), such considerations are pointless. The only thing that matters is what is currently happening at the Wolfe Center. What happened in the past is not relevant. Likewise, what may happen in the future is not relevant.

The only relevant point in time is what is in existence at the time the commercial cannabis permit is issued:

“No cannabis dispensary may be located within a one thousand-foot radius from a school or within a six hundred-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. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a six hundred-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. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.” (Merced Municipal Code Section 20.44.170(E)(3)(f))

### IV

#### **LASTLY, THE PLANNING COMMISSION WOULD NEED TO REMOVE THE 'PROPERTY LINE TO PROPERTY LINE' REQUIREMENT OF MERCED CODE SECTION 20.44.170(E)(3)(f)**

Lastly, the Planning Commission would also need to do away with the property line to property line requirement of the Merced Code. Merced Municipal Code Section 20.44.170(E)(3)(f) sets forth how the City is to measure such distances:

“No cannabis dispensary may be located within a one thousand-foot radius from a school or within a six hundred-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. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a six hundred-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. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. **The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.**" (Merced Municipal Code Section 20.44.170(E)(3)(f))

Harvest believes that appellant Medallion or others may argue that the Wolfe Center should be viewed as a single entity for the purposes of determining if permit #18-14R is to be granted. However, as can be seen from the above-noted code section, such a determination must be made pursuant to **"the property line** of the sensitive use lot to the closest **property line** on which the cannabis business is located.

The property located at 732 West 13th Street [APN 031-313-012; Lot 7 of 12] has its own separate legally distinct property line. Likewise, the property located at 760 West 13th Street [APN 031-313-013; Lot 8 of 12] has its own separate legally distinct property line. Accordingly, the Merced Code requires the 1,000 foot distance be measured only from the property line of the property located at 760 West 13th Street [APN 031-313-013; Lot 8 of 12]) to the Harvest property line. Furthermore, since no K-12 instruction is given within the confines of Lot 8, and since the Wolfe Center is not a school, there is no sensitive use currently occurring at that property.

All other property lines associated with the Wolfe Center are not relevant since all surveys on record note such distances would exceed 1,000 feet and therefore cannot be found to be in violation of Merced Municipal Code Section 20.44.170(E)(3)(f).

## V CONCLUSION

Since the Wolfe Center is not a school, and since there is no distance violation pursuant to Merced Municipal Code Section 20.44.170(E)(3)(f), the Planning Commission should once again approve Commercial Cannabis Business Permit #18-14R on behalf of Harvest of Merced.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP

Douglas Smurr  


# EXHIBIT A





November 8, 2018

Mr. Douglas Smurr  
Gordon Rees Scully Mansukhani

Dear Mr. Smurr:

#### PUBLIC INFORMATION REQUEST

The Merced County Office of Education is in receipt of your request for public information dated October 30, 2018 with an addendum on November 1, 2018. Please see below the responses to your requests:

##### **A. Pertaining to Regular K-12 Instruction:**

1. List of any and all K-12 instruction that currently takes place in Room W-12 of the Wolfe Educational Center;

**K-12 instruction takes place intermittently in Room W-12 for Foster Youth.**

2. List of all State certified/credentialed teachers who currently give K-12 instruction to students in Room W-12 of the Wolfe Educational Center; October 30, 2018

**None**

3. List of all students who currently receive K-12 instruction in Room W-12 of the Wolfe Educational Center;

**Foster Youth receive K-12 instruction intermittently in Room W-12. The names of Foster Youth are confidential.**

4. List of any and all K-12 instruction that currently takes place anywhere at the Wolfe Educational Center and identify each specific room number associated with such K-12 instruction;

**K-12 instruction takes place intermittently in Room W-12 for Foster Youth and in a regular-day program for a Special Education class in W-13, from which MCOE receives ADA from the state of California.**

5. List of all State certified/credentialed teachers who currently give K-12 instruction to students at any location within the Wolfe Educational Center and identify each specific room number the teacher is assigned to while providing such K-12 instruction;

**Marcie Gamble – W-13**

**Rebecca Lincoln – W-9**

**Lyalla Dias – W-11**

6. List of all students who currently receive K-12 instruction at any location within the Wolfe Educational Center and the specific room number where the students receive their K-12 instruction;

**The names of Foster Youth are confidential.**

**B. Pertaining to Special Education K-12 Instruction:**

7. List of any and all K-12 special education instruction that currently takes place in Room W-12 of the Wolfe Educational Center;

**Special Education instruction takes places in W-13.**

8. List of all State certified/credentialed teachers who currently give K-12 special education instruction to students in Room W-12 of the Wolfe Educational Center;

**Marcie Gamble — Special Education Mild/Moderate Disabilities & Moderate/Severe Disabilities, Multiple Subject BCLAD**

9. List of all students who currently receive K-12 special education instruction in Room W-12 of the Wolfe Educational Center;

**W-12 is a Foster Youth class and student information is confidential.**

10. List of any and all K-12 special education instruction that currently takes place anywhere at the Wolfe Educational Center and identify each specific room number associated with such K-12 special education instruction;

**K-12 instruction is taught in Room W-13 and MCOE receives ADA from the state of California for those students.**



11. List of all State certified/credentialed teachers who currently give K-12 special education instruction to students at any location within the Wolfe Educational Center and identify each specific room number the teacher is assigned to while providing such K-12 special education instruction;

**Marcie Gamble — Education Specialist - Special Education Mild/Moderate Disabilities & Moderate/Severe Disabilities, Multiple Subject BCLAD**

12. List of all students who currently receive K-12 special education instruction at any location within the Wolfe Educational Center and the specific room number where the students receive their K-12 special education instruction;

**While we will not identify specific students, attached is a list of information for students that attend the Special Education class in room W-13.**

On November 1, 2018, you sent an addendum to the initial request seeking:

1. A site map of the Wolfe Educational Center with all room numbers being labeled.

**Included as attachment**

2. A site map including the Wolfe Educational Center with all room numbers labeled.

**Included as attachment**

3. A list of all rooms by room number where any K-12 instruction is currently being taught at the Wolfe Educational Center by State accredited teachers.

**K-12 instruction is taught in Room W-13 and MCOE receives ADA from the state of California for those students.**

4. A list of all rooms by room number where K-12 instruction is currently not occurring at the Wolfe Educational Center by State accredited teacher(s).

**Rooms W-1 through W-11**

5. A list of all rooms by room number where educational instruction is currently not occurring at the Wolfe Educational Center by State accredited teacher(s).

**Educational instruction is currently occurring in all rooms at the Wolfe Educational Center except for W-8, which is an administrative office.**

6. A list of the hours of instruction each of the K-12 students receive on a daily basis at the Wolfe Educational Center by State accredited teacher(s).

**Students in the Special Education class in room W-13 are in attendance daily from 8:30 a.m. to 2:58 p.m. with an early dismissal on Wednesday at 12:53 p.m.**

7. A list of diplomas the Wolfe Educational Center granted to any 12<sup>th</sup> grade student during the 2017-2018 school year.

**No diplomas were issued during the 2017-18 school year.**

8. A list of diplomas the Wolfe Educational Center anticipates to grant to any 12<sup>th</sup> grade student during the 2018-2019 school year.

**MCOE does not anticipate granting diplomas during the 2018-19 school year.**

If you have any further questions, please contact me.

Thank you,

A handwritten signature in black ink, appearing to read "Nathan Quevedo". The signature is fluid and cursive, with the first name "Nathan" being more prominent than the last name "Quevedo".

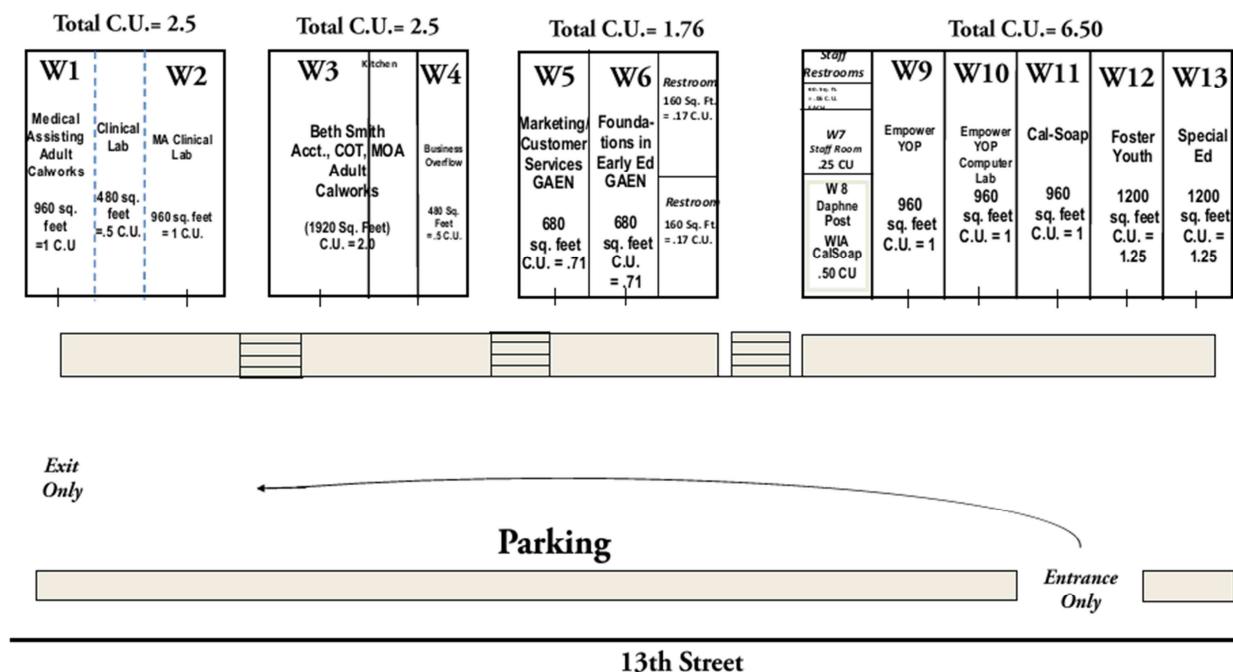
NATHAN QUEVEDO  
Media and Communications Manager



**Wolf Center  
Special Education Class  
Marci Gamble**

Student	Gender	Age	Grade	Disability	School
YB	F	18	12*	Intellectual Disability	Merced County Special Education
RG	M	18	12*	Autism	Merced County Special Education
RS	M	18	12*	Intellectual Disability	Merced County Special Education
SY	F	18	12*	Other Health Impairment	Merced County Special Education
AM	F	19	12*	Intellectual Disability	Merced County Special Education
SF	F	19	12*	Intellectual Disability	Merced County Special Education
JF	M	19	12*	Intellectual Disability	Merced County Special Education
KL	F	19	12*	Intellectual Disability	Merced County Special Education
MR	F	19	12*	Intellectual Disability	Merced County Special Education
AV	F	19	12*	Orthopedic Impairment	Merced County Special Education
OS	M	20	12*	Deafness	Merced County Special Education
PV	F	20	12*	Intellectual Disability	Merced County Special Education
FB	M	21	12*	Intellectual Disability	Merced County Special Education
RH	M	21	12*	Intellectual Disability	Merced County Special Education
MM	F	21	12*	Intellectual Disability	Merced County Special Education

**Wolfe Education Center  
723 W. 13<sup>th</sup> Street, Merced CA**



**Points, Authorities, and Exhibits Verifying**  
**Wolfe Education Center - School Campus**  
**Requiring**  
**Denial of CCBP #18-14R 'Harvest of Merced**

***Issue 1: Is there any basis for a separate 'sensitive use' designation for any parcel upon which the Wolfe Education Center Campus is situated?***

***Conclusion: No.***

***Analysis:***      **Exhibit A: Overhead Satellite View 732 W 13th Street**

The Wolfe Education Center is an MCOE owned and operated facility, comprised of several buildings sitting between 'O' and 'N' Streets on 13th Street.

**Exhibit B: Street View, 13th Street Entrance**

**Exhibit C: Street View, 'N' Street Entrance (North Facing)**

**Exhibit D: Street View, 'O' Street (South Facing)**

**\*Exhibit E: Wong Engineers Survey illustrating (W12- W13) on both Parcels**

Wolfe Education Center is comprised of a single campus with multiple buildings, a shared parking lot, shared walkways, with every building built to FIELD Act standards. Classroom, W13, which is located within the building closest to the corner of 'O' and 13th, sits on both legal parcels at issue.

Therefore, there was never any logical basis for the parcels at issue to be separated for the purposes of the 'School Definition' and 1,000 ft. sensitive use radius.

***Issue 2: Is the Wolfe Education Center 732 W 13th St., within 1,000 ft. of the Harvest Location at 863 W 15th?***

***Conclusion: Yes.***

***Analysis:***      **Exhibit F: City of Merced Survey, Joe Cardoso (981.51 ft.)**

**Exhibit G: Wong Engineers Survey (981.95 ft.)**

***Issue 3: Does the Wolfe Education Center qualify as a School?***

***Conclusion: Yes***

**"School" definition per Merced Municipal Code Section 20.44170(c), item 47.-**



"School means any public private school providing instruction in kindergarten or any of grades 1-12, 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).

**"School" definition per California Department of Education**

The term "school" is used to refer to all educational institutions that have the following characteristics:

- One or more teachers to give instruction;
- Have an assigned administrator;
- Are based in one or more buildings; and
- Contain enrolled or prospectively enrolled students

Additional Criteria used to evaluate whether an entity or location is a school include:

- Education is its primary purpose;
- Students are enrolled at the entity or location and not a referring institution;
- Students are enrolled on a full-time basis;
- **If it accommodates grade 12 students**, can it grant a diploma to its graduates?
- Students have full access to all of the facilities and amenities of the entity.

***Analysis:***      **Exhibit H: California Department of Education School Definition**

**Exhibit I: Harvest - Tietjen Email Exchange**

**Exhibit J: Letter from Steve Tietjen, MCOE Superintendent (Signed Copy Lodged with Merced City Council and Staff)**

**Exhibit K: Steve Tietjen Responses to Medallion Questions**

**"School" as defined by Merriam Webster Dictionary**

- 1**           : an organization that provides instruction: such as  
**a**           : an institution for the teaching of children

**Exhibit L: Photos of Wolfe Education Center Facilities (W13)**

Based on all the information and documentation provided, it is clear the Wolfe Education Center and every part thereof, is a School located within 1,000ft. of the Harvest location. Accordingly, the application for CCBP #18-14R 'Harvest of Merced' must be denied.

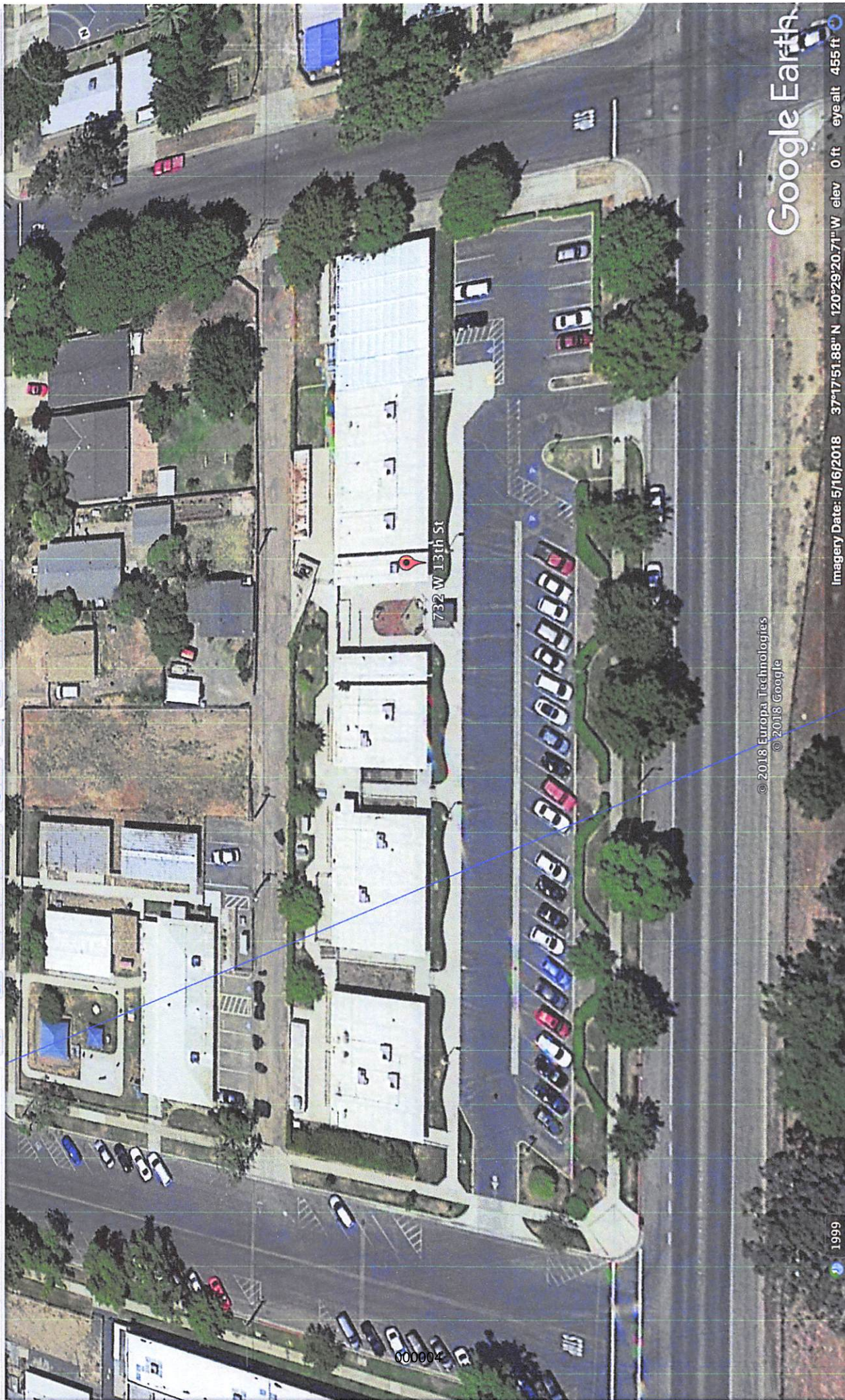
**Exhibit A-**  
**Overhead Satellite View**  
**732 W 13th Street**



732 West 13th Street, Merced, CA



Sign in



© 2018 Europa Technologies  
© 2018 Google

Google Earth

1999

Imagery Date: 5/16/2018 37°17'51.88" N 120°29'20.71" W elev 0 ft eye alt 455 ft



# Exhibit B-

## Street View

### 13th Street Entrance





# Exhibit C-

## Street View

### 'N' Street Entrance





Google

000008

**Exhibit D-**  
**Street View**  
**(Facing North from 'O' Street)**





000010

# Exhibit E-

## Wong Engineers Building Survey (W12-W13)



DATE OF SURVEY: NOVEMBER 2, 2018



SCALE: 1" = 30'

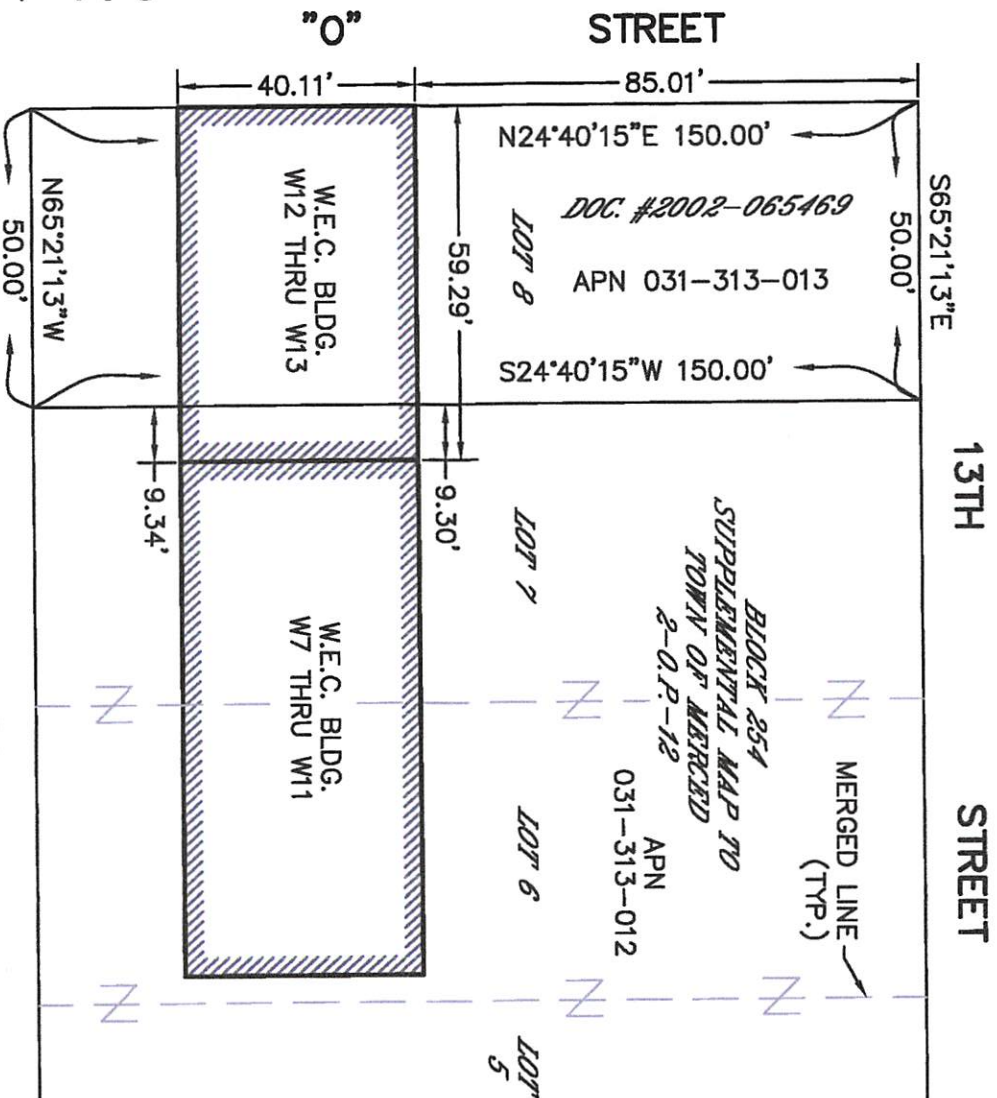


**LEGEND:**

- BLDG. DENOTES BUILDING
- DOC. DENOTES DOCUMENT
- O.P. DENOTES OFFICIAL PLATS
- TYP. DENOTES TYPICAL
- W.E.C. DENOTES WOLFE EDUCATION CENTER

**EXHIBIT OF W.E.C. BUILDING**

LOT 8, BLOCK 254, SUPPLEMENTAL MAP TO TOWN OF MERCED, IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 2 OF MAPS, PAGE 12, MERCED COUNTY RECORDS.



**WONG ENGINEERS, INC.**

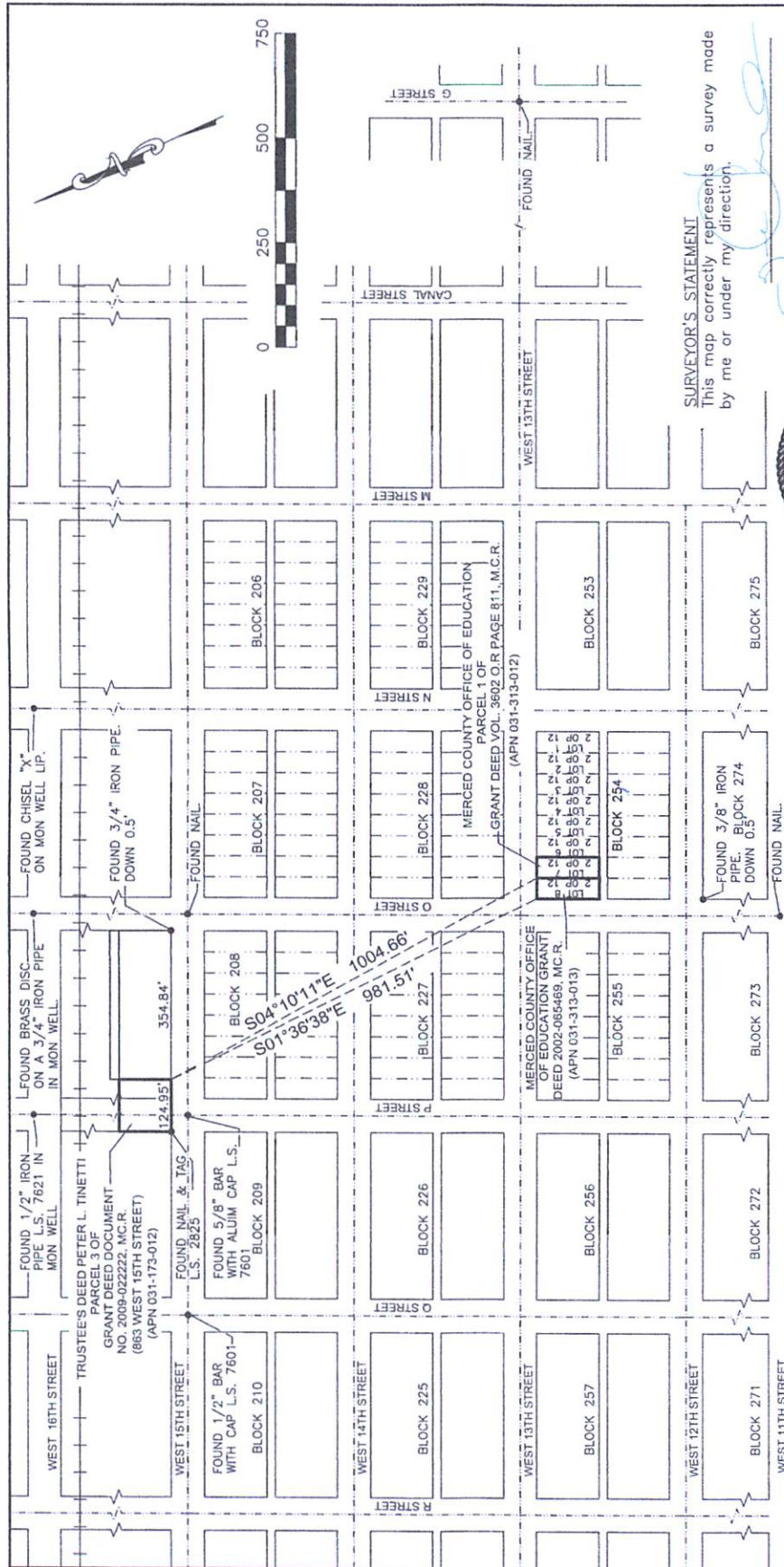
PLANNING ENGINEERING SURVEYING  
4578 FEATHER RIVER DRIVE, SUITE A  
STOCKTON, CALIFORNIA 95219  
(209) 476-0011 NOVEMBER 5, 2018

LOT 9	LOT 10	LOT 11	LOT 12
APN	APN	APN	APN
031-313-014	031-313-015	031-313-016	

# Exhibit F-

## City of Merced Survey, Joe Cardoso






SURVEYOR'S STATEMENT  
This map correctly represents a survey made  
by me or under my direction.



DR. BY: CARDOSO	File No.
DATE: 10/8/18	Sheet
CH. BY:	1
DATE:	of 1
SCALE: 1" = 250'	

SITE PLAN



**City of Merced**  
"Gateway to Yosemite"  
DEVELOPMENT SERVICES  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 395-6846

# Exhibit G-

## Wong Engineers Survey



# WEI - BOUNDARY SURVEY

DATE OF SURVEY: 10/08/2018

## Legend

- 3/4" PIPE (47-RS-32)
- 3/4" PIPE (BC-786)
- 3/4" PIPE LS 3733 (47-RS-32)
- 3/4" PIPE LS 4403 (47-RS-32)
- 3/8" PIPE (47-RS-32)
- BOUNDARY RETRACEMENT PT.

981.95'



600 ft

Google Earth

© 2018 Google

000016





# Wong Engineers, Inc.

4578 Feather River Drive, Suite A  
Stockton, California 95219  
Phone (209) 476-0011

Zachary C. Wong P.E., P.L.S.

Job No.: 4014

Client: Michael O'Leary

Date of Survey: October 8, 2018

NO.	NORTHING	EASTING	DESCRIPTION	REFERENCE
1	1932048.6997	6564783.4242	FOUND 3/4" IRON PIPE	BC-786
2	1932197.0994	6564460.7635	FOUND 3/4" IRON PIPE	BC-786
3	1930851.9433	6564321.5481	FOUND 3/8" IRON PIPE	47-RS-32
4	1931578.9883	6564655.5050	FOUND 3/4" IRON PIPE TAGGED L.S. 3733	47-RS-32
5	1931353.0037	6564188.9678	FOUND 3/4" IRON PIPE TAGGED L.S. 4403	47-RS-32
6	1931384.2237	6564120.9068	FOUND 3/4" IRON PIPE TAGGED L.S. 4403	47-RS-32
7	1931448.8774	6563980.0085	FOUND 3/4" IRON PIPE	47-RS-32
8	1931215.5449	6564488.5629	BOUNDARY RETRACEMENT POINT FOR PROPERTY CORNER	2-OP-12

BASIS OF BEARINGS, DISTANCES AND COORDINATES ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 AND CALIFORNIA STATE PLANE, ZONE 3 IN U.S. FEET. A LINE BEARS NORTH 45°10'01" WEST IS BETWEEN TWO CITY OF MERCED GPS STATIONS #1076 AND #1082. IT WAS CALCULATED FROM THE COORDINATES SHOWN ON 'CITY OF MERCED GPS SURVEY CONTROL NETWORK MAP', FILED FOR RECORD IN BOOK 27 OF SURVEYS, AT PAGE 43, MERCED COUNTY RECORDS. ALL DISTANCES SHOWN ARE GROUND DISTANCES AND MUST BE MULTIPLIED BY 0.999950671 TO OBTAIN GRID DISTANCES.

A DISTANCE BETWEEN POINT #2 AND #8 IS 981.95 FEET.



DATE: OCTOBER 9, 2018



# BOUNDARY NOTES

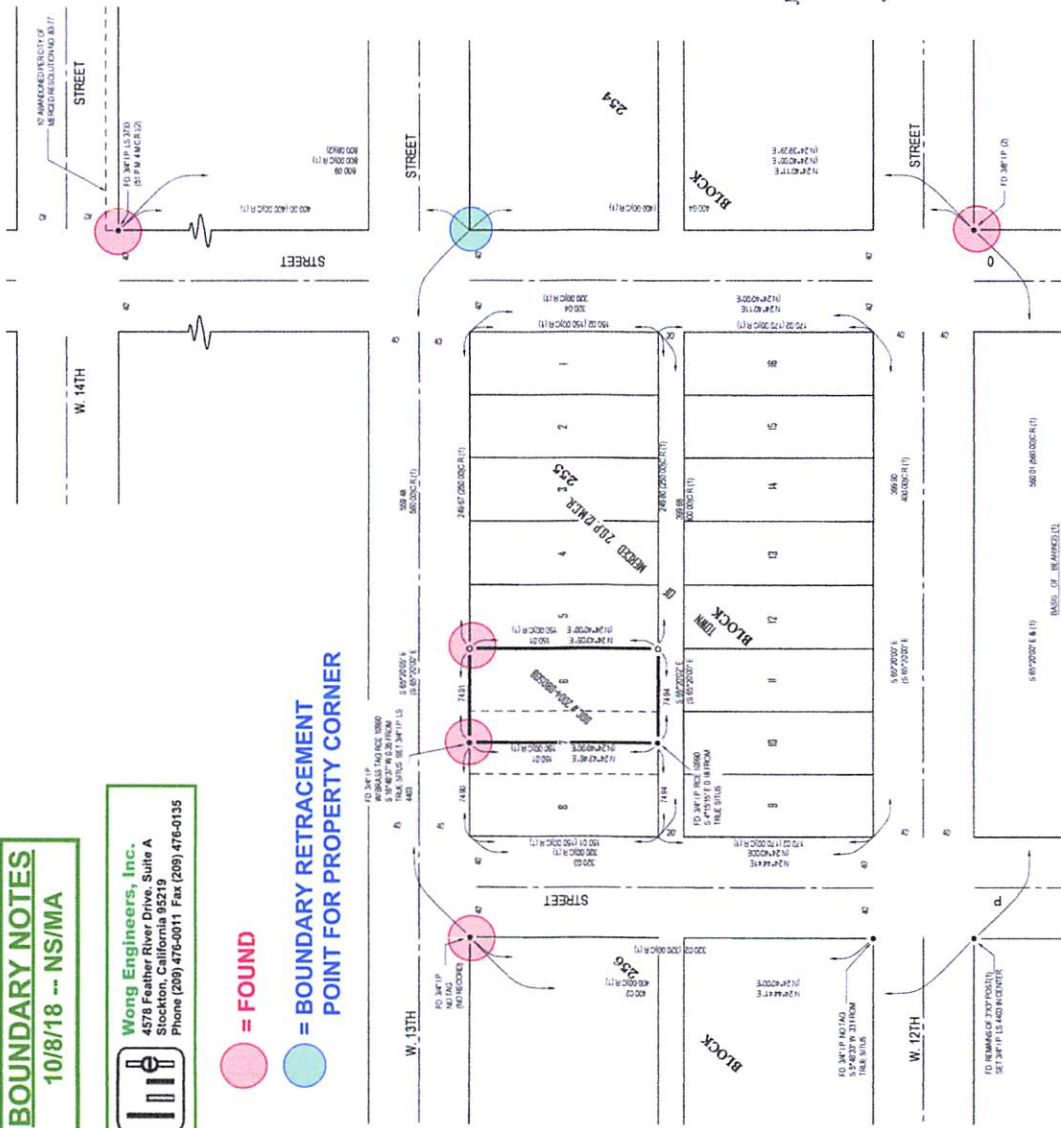
10/8/18 -- NS/MA



**Wong Engineers, Inc.**  
4578 Feather River Drive, Suite A  
Stockton, California 95219  
Phone (209) 475-0011 Fax (209) 475-0135

**= FOUND**

**= BOUNDARY RETRACEMENT  
POINT FOR PROPERTY CORNER**



**BCA**  
BERRY, CARDOZA & ASSOCIATES, INC.  
1000 N. G ST., SUITE 200  
MERCED, CA 95340 (209) 722-8042  
FAX (209) 722-8042  
www.bca-survey.com  
Engineering • Land Surveying

Job No. 08047 P. 11 710 Pg. 1 of 1

**BASIS OF BEARINGS**  
S 67°20'00" E FOR THE SOUTH LINE OF 12TH STREET AS SHOWN ON THE "OFFICIAL MAP OF THE TOWN OF MERCED" RECORD IN BOOK 12 OF OFFICIAL PLATS AT PAGE 12, MERCED COUNTY RECORD.

**REFERENCES:**  
(1) SUPPLEMENTAL MAP OF THE TOWN OF MERCED, 2 OF P. 12, M.C.B.  
(2) CORNER RECORD #774-RK

## SURVEYOR'S STATEMENT

This map correctly represents a survey made by me or under my direction in accordance with the requirements of the Land Surveyor's Act at the request of Joseph Reyes on October 30, 2008.



*Joseph L. Reyes*  
Joseph L. Reyes, L.S. 4403

## COUNTY SURVEYOR'S STATEMENT

This map has been examined in accordance with Section 8706 of the Land Surveyor's Act this 11th day of December, 2008.



Paul A. Fildes  
COUNTY SURVEYOR  
No. 4495  
Exp. 9-30-10  
By: *Joseph L. Reyes*  
Joseph L. Reyes, L.S. 4403  
Deputy

## RECORDER'S STATEMENT

No. 2008-26333-1  
Filed this 13th day of December, 2008, at 2:32 o'clock P.M., in Volume 47 of Surveys at Page(s) 32, at the request of Berry-Cardoza & Associates, Inc.

Fee \$9.00 per page.

M. Stephen Jones  
COUNTY RECORDER  
*M. Stephen Jones*

## LEGEND

- Monument found and accepted as noted hereon. All found untagged monuments were not tagged unless otherwise noted.
- Monument set. 3/4" iron pipe with L.S. tag 4403 attached, unless otherwise noted.
- Survey boundary
- ( ) According to that certain reference (see reference)
- C.B. Calculated from record data
- M.C.B. Merced County Records
- Notes: All distances are ground and in feet and/or decimal parts thereof. All distances are shown from true corners.

## RECORD OF SURVEY

FOR

**JOSEPH REYES**

Being a survey of Lot 6 & the E. 1/2 of Lot 7 in Block 255 as shown on the map "Town of Merced" - Volume 2 Official Plats, Page 12 Merced County, California.

Section 25, T. 7 S., R. 13 E., M.D.B. & M.

City of Merced

October, 2008  
California

Scale: 1" = 60'

Merced County

VOLUME 47

PAGE 32

000018

**Wong Engineers, Inc.**

4578 Feather River Drive, Suite A  
Stockton, California 95219  
Phone (209) 476-0011 Fax (209) 476-0135



**FOUND:**

**BOUNDARY NOTES**  
**10/8/18 -- NS/MA**

Fd. 3/4" iron pipe bent over

Set 3/4" x 30" iron pipe

N. 65° 21' W. 480.00'

N. 65° 21' W. 355.00'

Fd. 3" x 3" Rwd. post

Peter R. Tinetti and Barbara Tinetti

By Deed recorded July 2, 1962

Vol. 1576 O. R. Pg. 983

Set 3/4" x 30" iron pipe

S. 65° 21' E. 355.00'

S. 65° 21' E. 480.00'

Set 3/4" x 30" iron pipe

N. 24° 39' E. 126.00'

N. 24° 39' E. 126.00'

Curb and Gutter

Curb and Gutter

WEST 15<sup>TH</sup> STREET



W. E. BEDESEN & ASSOCIATES, INC.  
ENGINEERING & SURVEYING  
919 W. 16TH ST., MERCED, CALIF. 95340  
PHONE 722-6694

SURVEY FOR  
PETER R. TINETTI ET UX  
15<sup>TH</sup> STREET AND "O" STREET  
SECTION 25, T. 7S. R. 13E., M.D.B. & M.  
CITY OF MERCED  
MERCED COUNTY, CALIFORNIA  
SCALE: 1" = 60'  
NOV. 18, 1969

20-7-A

430-44, 45



# Exhibit H-

## CA Dep. of Education

### "School" Definition



[Home](#) / [Data & Statistics](#) / [School Identification](#) / [Schools & Districts](#)

## Definition of a School

Provides definitional information to California Department of Education staff for purposes of managing school and program information.

---

The purpose of providing this information is to ensure consistency among divisions of the California Department of Education (CDE) regarding department identification and management of school and program information.

In providing this information, the CDE hopes to accomplish the following:

1. List the essential attributes that define a school such that it is possible to distinguish schools from non-school entities.
2. Assist in resolving difficulties associated with reporting information on schools.
3. Provide definitions that anticipate future changes in institutions for education and learning.

## Definition of a School

The term "school" is used to refer to all educational institutions that have the following characteristics:

- Have one or more teachers to give instruction
- Have an assigned administrator
- Are based in one or more buildings
- Contain enrolled or prospectively enrolled students

## Definition of a Public School



The CDE further defines a public school as a kindergarten through grade twelve and/or adult educational institution that:

- Is supported with public funds.
- Is authorized by action of and operated under the oversight of a publicly constituted local or state educational agency.
- Provides educational services to all students who are enrolled.
- Has an appropriately credentialed teacher (or teachers) who provides instruction.
- Has at least one appropriately credentialed administrator, usually a principal, who is responsible for all aspects of school administration including supervision and evaluation of staff, fiscal responsibility, student discipline and safety, supervision and evaluation of curriculum, and assessment of academic achievement and school accountability.
- Administers California statewide assessments to its students at the required grade levels.
- Has an administrator, usually a principal, with access to and responsibility for maintaining official student records for all enrolled students.
- With the exception of charter schools: Implements a curriculum that fully meets state requirements as specified in the California Education Code relating to required courses of study.
- Is non-sectarian.
- With the exception of charter schools: Contains a budget structure that is consistent with the budget structure of schools operated by the authorizing agency.
- Is based in one or more buildings that are "Field Act" compliant,\* unless exempt.

\*Earthquake resistant construction. The Field Act was one of the first pieces of legislation that mandated earthquake resistant construction (specifically for schools in California) in the United States.

## Definition of a Private School

A private school is a school, as defined, that is owned or operated by a private person, firm, association, organization, or corporation, rather than by a public agency.

## Is it a Program, or is it a School?

In determining whether a given entity is a school or a program, consider the following questions:

- Is the *educational component* of the entity *secondary* to its primary purpose, which is other than education?
- Do students, who are enrolled in the entity, remain members of the school that referred them?
- Do all students enroll on a part-time basis?

If the answer to *any* of those three questions is *yes*: This entity is not a school, and it may be a program.

Next, consider these questions:

- Except for State Special Schools, can the entity, if it accommodates grade twelve students, grant a diploma to its graduates?
- Do the students have full access to all of the facilities and amenities of the entity?

If the answer to *either* of those two questions is *no*: This entity is not a school, and it may be a program.

## Frequently Asked Questions

### What does "based in one or more buildings" mean?

Although most schools are located within a building or buildings, some educational institutions are able to deliver education via electronic means (e.g., computer-based training or Internet courses). As such, although it is not essential that the education be delivered to students within a building, it is expected that a school be *based* in a building. For example, a school that uses the Internet to deliver education would still have a place where it would receive mail; the school would also have a computer located in a building.



## **Does an administrator have to be full-time and solely devoted to one school?**

There are geographical areas where the population of people is very small and is geographically dispersed. As such, it may be necessary to establish several small entities to make education and instruction accessible to a small number of students. It would not be economically practical to require a separate administrator for each school. There are also instances where a few students must be separated from other students for disciplinary reasons. In any case, in order for each of those educational institutions to be designated a "school," each would need to have all of the characteristics of a school.

Additionally, in order to determine whether two educational institutions occupying the same physical location are separate schools, one would expect to see: Either a separate administrator associated with each educational institution, or that each institution is established under separate statutory authority; and that the entities have different staffing structures, schedules, and a separate physical entrance.

## **What type of student records is the educational institution's administrator(s) required to maintain?**

Administrators of educational institutions shall have access to (and shall be responsible for maintaining) each enrolled student's pupil record as defined by the California Code of Regulations, Title 5, sections 430, et seq [↗](#). Note that charter schools are not governed by these regulations; however, it is reasonable to expect that the school's administrator would maintain student records for all students enrolled in the charter school.

## **If it is a charter school owned by a firm, is it then a private, not public, school?**

Because they are "established by action of and operated under the jurisdiction of a publicly constituted local or state educational agency," even those charter schools that are owned by a firm are considered to be public schools.

**Back to top**

**Questions: CDS Administration | [cdsadmin@cde.ca.gov](mailto:cdsadmin@cde.ca.gov) | 916-327-4014**

Last Reviewed: Tuesday, February 13, 2018

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# Exhibit I-

## Harvest - Tietjen

### Email Exchange

**Subject:** RE: Function of the Wolfe Educational Center  
**Date:** Friday, October 19, 2018 at 8:05:59 AM Pacific Daylight Time  
**From:** Holly Newlon  
**To:** Steve Tietjen

Hi Steve,

Please see the responses below each question. Please let me know if you need any further information.

**Holly Newlon**  
Director, Educational Services

**From:** Steve Tietjen  
**Sent:** Thursday, October 18, 2018 8:23 PM  
**To:** Holly Newlon  
**Subject:** Fwd: Function of the Wolfe Educational Center

Hi Holly,

I keep trying to explain to these people that students attend class at Wolfe Center, but they just keep pressing. Can you respond to these questions and send this back to me.

Thanks.

Sent from my iPhone

Begin forwarded message:

**From:** Douglas Smurr <[dsmurr@grsm.com](mailto:dsmurr@grsm.com)>  
**Date:** October 18, 2018 at 5:19:32 PM PDT  
**To:** "'[stietjen@mcoe.org](mailto:stietjen@mcoe.org)'" <[stietjen@mcoe.org](mailto:stietjen@mcoe.org)>  
**Subject:** Function of the Wolfe Educational Center

Dear Mr. Tietjen:

I have some questions concerning the Wolfe Educational Center located at 732 W. 13<sup>th</sup> Street, Merced, CA 95341. I am representing a client with a permit matter currently pending before the Planning Commission of the City of Merced. The function of the Wolfe Educational Center may impact the permitting process. If you could answer the following nine questions regarding the Wolfe Educational Center it would greatly help the Planning Commission reach a proper decision. Just a yes or no response would suffice, though you may give more information if you wish.

1. Are any kindergarten through grade twelve classes taught at the Wolfe Educational Center?

Not at this time, however the Wolfe Educational Center (WEC) has been utilized in the past for grades 9-12 and could be utilized for those grade levels again in the future.



2. Does the Wolfe Educational Center have an assigned administrator?  
**Yes. Daphne Post is the principal/coordinator.**
3. Is administrative business the primary purpose of the Wolfe Educational Center?  
**No, the primary purpose of the WEC is educational instruction.**
4. Is educational instruction the primary purpose of the Wolfe Educational Center?  
**Yes.**
5. If there is an educational component to the Wolfe Educational Center, is the educational component secondary to the Wolfe Educational Center's administrative business or other business?  
**No.**
6. Do students who are enrolled at the Wolfe Educational Center remain members of the school that referred them?  
**No.**
7. Are all students of the Wolfe Educational Center enrolled on a part-time basis?  
**No.**
8. If the Wolfe Educational Center accommodates grade twelve students, does the Wolfe Educational Center grant a diploma to its graduates?  
**Currently there are no grade twelve students.**
9. Do the students have full access to all of the facilities and amenities of the Wolfe Educational Center?  
**Yes.**

Please do not hesitate to call me should you have any questions.

Many thanks,

**DOUGLAS SMURR** | Of Counsel  
**GORDON & REES**  
**SCULLY MANSUKHANI**

3 Parkcenter Drive, Suite 200  
Sacramento, CA 95825  
D: 916-830-6532  
[dsmurr@grsm.com](mailto:dsmurr@grsm.com)  
[www.gordonrees.com](http://www.gordonrees.com)

Alabama | Arizona | California | Colorado | Connecticut | Delaware | Florida | Georgia | Illinois | Kentucky | Louisiana | Maryland | Massachusetts | Missouri | Nebraska | Nevada | New Jersey | New York | North Carolina | Ohio | Oklahoma | Oregon | Pennsylvania | Rhode Island | South Carolina | South Dakota | Texas | Utah | Virginia | Washington | Washington, D.C. | West Virginia | Wisconsin

[www.grsm.com](http://www.grsm.com)

**Exhibit J-**  
**Letter from Steve Tietjen,**  
**MCOE Superintendent**  
(Signed Copy lodged with Merced City Council  
and Staff)





Steve M. Tietjen, Ed.D. | County Superintendent of Schools

632 WEST 13TH STREET | MERCED, CA 95341 | (209) 381-6600 | WWW.MCOE.ORG

October 25, 2018

Mike Lynch  
801 10<sup>th</sup> Street  
5<sup>th</sup> Floor, Suite 102  
Modesto, CA  
95354

Dear Mike,

**You have asked about the content of the curriculum for the transition class of special education students currently being served in the Wolfe Center.** The adopted curriculum in the class is the Unique Learning System/New-2-You online program. The Unique Learning System (ULS) is an online, standards-based program specially designed for students with special needs to access the general education curriculum. The rigorous, standards-based materials are differentiated allowing each student access the curriculum at their level. The curriculum is differentiated first by grade span (K-2, 3-5, 6-8, 9-12, Transition – Ages 18-22). Within each grade span, there are three Instructional Target Levels that are aligned to State Standards and Transition Standards. Monthly lesson plans address critical skills in Reading/Language Arts, Writing, Math, Science and Social Studies. The New-2-You (N2Y) feature of the curriculum allows students to participate in all curricular areas through current events. The N2Y curriculum is also differentiated by grade spans and Instructional Target Levels.

Because of the unique needs of the student population being served, the alignment of content is very much like what you would see in the early elementary grades (K-1) in a regular education classroom.

Best regards,

Steve Tietjen, Ed.D.  
Merced County Superintendent of Schools

c. Steve Carrigan, City Manager, Merced

# Exhibit K-

## Steve Tietjen

### Responses to Medallion Questions



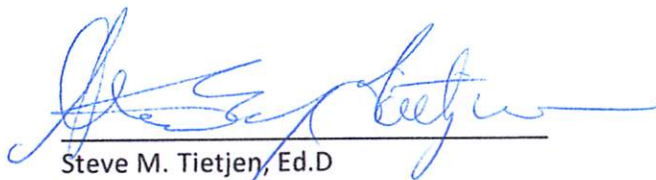
**Questions for MCOE Re: Wolfe Education Center.**

1. Does Wolfe operate a school or a program in Classroom 13?
  - School. Education is the primary purpose of the facility. The enrolled student do not remain members of the school that referred them. The full time students are enrolled in Individualized Education Plans. Although there is not currently grade level 12 curriculum taught. Wolfe grants diplomas when they are earned. The students have full access to all facilities and amenities at Wolfe.
2. Does Wolfe Education Center Facility operate out of all the building units situated on the campus between N and O Streets, fronting 13th Street?
  - Yes.
3. Does the Wolfe Education Center have one or more teachers that provide classroom instruction in Classroom 13?
  - Yes, one credentialed teacher and two para professionals.
4. Is there an assigned administrator overseeing instruction at the Wolfe Education Center?
  - Yes
5. Is there any functional or practical difference between Rooms 12 and 13, and the rest of the rooms (1-11) located at the Wolfe Education Center?
  - No, all classrooms are built in compliance with the Field Act.
6. Is any Kindergarten or grade 1-12 curriculum taught at the Wolfe Education Center?
  - Yes, classroom study is conducted pursuant to Individualized Education Plans ("IEPs").
7. Does the Wolfe Education Center campus have an assigned school number recognized by the California Department of Education?
  - Yes, CDS Code - # 24 (County Code) 10249 (org code) School Code (6069199).
8. Does MCOE receive compensation for any instruction provided to students at the Wolfe Education Center, for average daily attendance, or any other funding or reimbursements from the State?
  - Yes, currently 15 students generate ADA in W13.
9. If classroom instruction is provided at the Wolfe Education Center, is such instruction State approved coursework?
  - Yes. The students receive annual assessments and are reviewed every 3 years with a major assessment.

10. What is the highest grade level now taught at the Wolfe Education Center?
  - Post high school classes for Empower and CTE/ROP students. Grade three is currently the highest level of instruction in the special education transition classroom W13.
11. As a school, is the Wolfe Education Center required to issue a diploma or certificate of completion for coursework completed under the 12th grade level?
  - Yes, a certificate of completion is issued to the students. The children in the transition classroom at Wolfe Education will not reach Grade 12 level instruction.
12. If diplomas are not provided at the culmination of such coursework, are any certificates of completion, or similar instrument or acknowledgment of completion provided?
  - Pre through third grade level instruction. Yes, Certificates of Completion are issued to student the year in which they turn 22.
13. Could you describe the curriculum for instruction provided to Students in Classroom W-13?
  - Pre K through third grade level instruction. The curriculum is designed to address the Calif. State Standards at the appropriate comprehension level for these students.
14. Do Students enrolled at the Wolfe Education Center have access to the entire facility, including the parking areas?
  - The transition class students are only in Rm. W13 Yes, other rooms are used by various group W12 is the Foster Youth Room.
15. What are the hours of classroom operations in Classroom 13?
  - Five days a week from approximately 8 a.m. to 3:30 p.m.
16. Would you consider Education at the primary or secondary function of the Wolfe Education Center?
  - The primary focus and most important role of Wolfe is to provide a facility for continuously enrolled students that have not graduated and are being educated pursuant to an IEP.
17. Are students enrolled at the Wolfe Education Center for classroom instruction enrolled on a part-time basis?
  - No. Students are full time in W13 other rooms operate various hours.
18. Does the Wolfe Education Center currently accommodate 12th grade students?



- Yes. The School accommodates K through 12 grade level education. Some of the students that are continuously enrolled are beyond the 12 years of instruction, but considered 5<sup>th</sup> year seniors.
19. Does the Wolfe Education Center administration maintain official student records for enrolled students?
- Yes
20. Does the Wolfe Education Center provide educational services to all students who are enrolled?
- Yes
21. Does the Wolfe Education Center administer statewide assessments to its students at the required grade level?
- Yes
22. Does the Wolfe Education Center implement student curriculums that fully meet State requirements?
- Yes
23. Is the Wolfe Education Center non-sectarian in nature?
- Yes
24. Does the Wolfe Education Center operate under a budget structure authorized by a local School Board?
- Yes and the County Superintendent of Schools.



Steve M. Tietjen, Ed.D  
Merced County Superintendent of Schools  
November 1, 2018

# Exhibit L-

## Photos of Wolfe Education Center Facilities (W13)









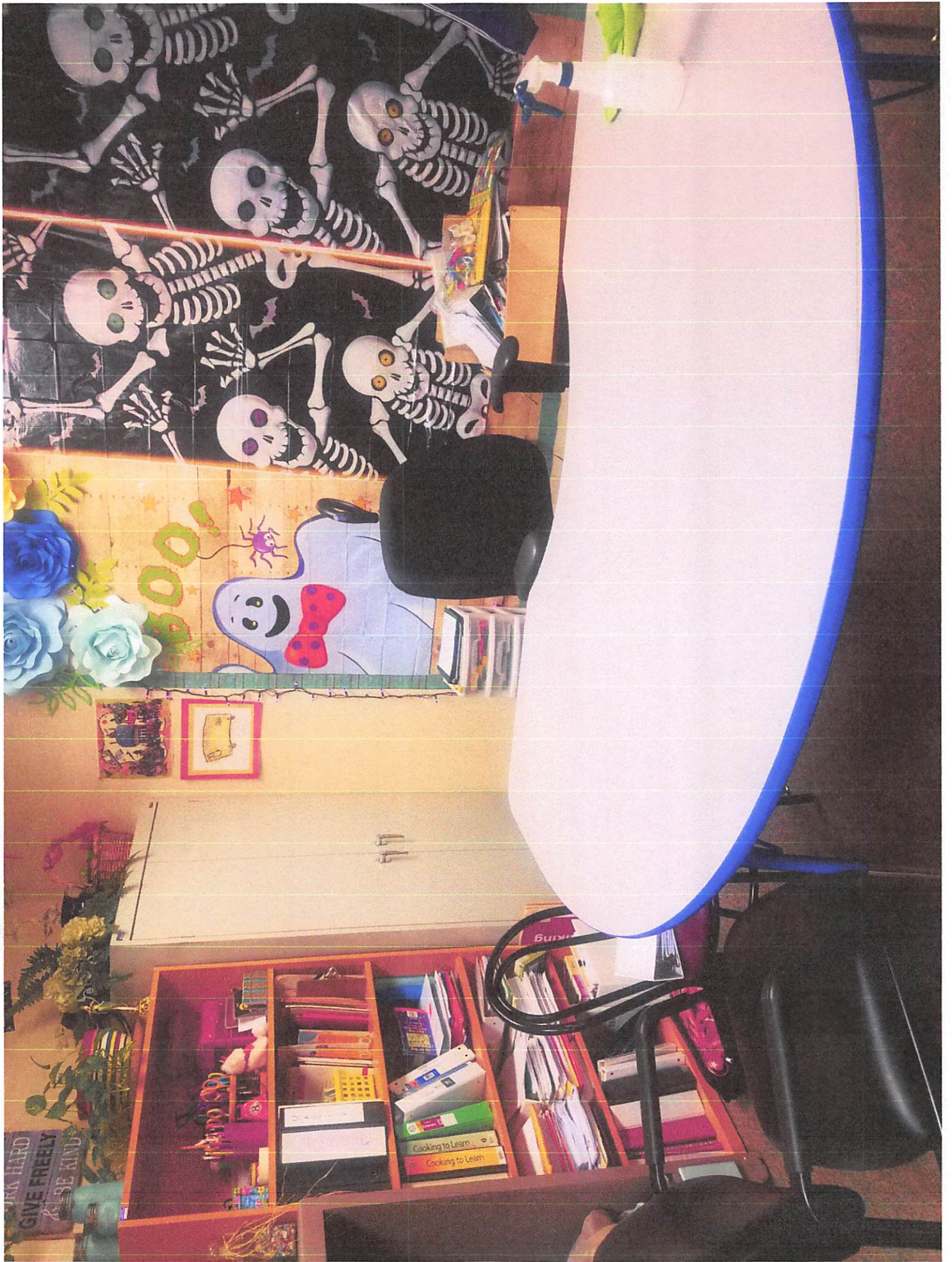














**CITY OF MERCED**  
**Planning Commission**

**Resolution #\_\_\_\_\_**

**WHEREAS**, the Merced City Planning Commission at a special meeting of November 14, 2018, held a public hearing and re-considered **Commercial Cannabis Business Permit #18-14R**, initiated by Harvest of Merced, LLC., on a property owned by Stephen G. Tinetti, trustee. This application is a request to permit the operation of a Retail Dispensary, including delivery services, for both medicinal and adult use cannabis and cannabis-related products on a 0.36 acre parcel in the General Commercial (C-G) Zone at 863 W. 15th St.; also known as Assessor's Parcel Number (APN) 031-173-012; and,

**WHEREAS**, the Merced City Planning Commission concurs with the finding of fact for denial in Staff Report #18-30, as follows:

- 1) Based on the evidence on the record, both in the staff report and from the public testimony on November 14, 2018, the Planning Commission finds that 863 W. 15<sup>th</sup> St. is within 1,000 feet of a school, as defined in MMC 20.44.170(C).47.

And,

**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby deny Commercial Cannabis Business Permit #18-14R.

Upon motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

**ATTACHMENT U**



PLANNING COMMISSION RESOLUTION #\_\_\_\_\_

Page 2

November 14, 2018

Adopted this 14<sup>th</sup> day of November 2018

\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

\_\_\_\_\_  
Secretary

**CITY OF MERCED**  
**Planning Commission**

**Resolution #\_\_\_\_\_**

**WHEREAS**, the Merced City Planning Commission at a special meeting of November 14, 2018, held a public hearing and re-considered **Commercial Cannabis Business Permit #18-14R**, initiated by Harvest of Merced, LLC., on a property owned by Stephen G. Tinetti, trustee. This application is a request to permit the operation of a Retail Dispensary, including delivery services, for both medicinal and adult use cannabis and cannabis-related products on a 0.36 acre parcel in the General Commercial (C-G) Zone at 863 W. 15th St.; also known as Assessor's Parcel Number (APN) 031-173-012; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through N of Staff Report #18-30, including the Planning Commission's finding of fact as follows:

- 1) Based on the evidence on the record, both in the staff report and from the public testimony on November 14, 2018, the Planning Commission finds that 863 W. 15<sup>th</sup> St. is not within 1,000 feet of a school, as defined in MMC 20.44.170(C).47.

And,

**NOW THEREFORE**, after discussing all the issues, the Merced City Planning Commission does resolve to hereby approve Commercial Cannabis Business Permit #18-14R, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

**ATTACHMENT V**



PLANNING COMMISSION RESOLUTION #\_\_\_\_\_

Page 2

November 14, 2018

Adopted this 14<sup>th</sup> day of November 2018

\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

**Conditions of Approval**  
**Planning Commission Resolution # \_\_\_\_\_**  
**Commercial Cannabis Business Permit #18-14R**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Attachment C of Staff Report #18-30, and Exhibit 2 (floor plan), Attachment D of Staff Report #18-30, except as modified by the conditions.
2. All conditions and requirements contained in Merced Municipal Code (MMC) Section 20.44.170/Ordinance #2480 (Attachment H of Staff Report #18-30) shall apply. Particular attention shall be paid to MMC 20.44.170(F) “Additional Regulations for Dispensary and Retail Sales of Cannabis” and MMC 20.44.170(G) “Additional Regulations for Commercial Cannabis Delivery Services.”
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the



action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control. State Law shall prevail in regards to cannabis activities as permitted by State Law.
7. The proposed project shall comply with all applicable regulations of the State of California including, but not limited to, those found in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).
8. The applicants shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment I of Staff Report #18-30) at the time of submittal for building permits for tenant improvement.
9. The details of the property's fencing (if any), security, and screening are to meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
10. The applicants shall keep on the premises of the proposed project site a physical copy of the approved plans, to be annotated and updated accordingly with any notes, changes, or requirements determined to be necessary by representatives of the City of Merced or any contractors that the City of Merced may employ for the purpose of site inspections. These plans shall be made available to the City's representatives, employees, agents, inspectors, or contractors upon request.
11. Fire sprinklers shall be modified or installed to accommodate the building configuration and process configuration prior to occupancy if required by the Chief Building Official.
12. Regulatory Fees, as per Resolution #2017-67, are to be paid prior to the issuance of a Certificate of Occupancy and annually thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually (starting on January 1, 2019) to account for inflation

by using the Consumer Price Index (CPI). In no event, shall the fees in any year be less than the preceding year.

13. A Commercial Cannabis Business Permit is valid for one year or until December 31 of each year, unless sooner revoked. Applications for the renewal of a permit shall be filed with the Director of Development Services, in accordance with 20.44.170(L).4, "Commercial Cannabis Business Permit Renewal (All Types)", at least sixty (60) calendar days before the expiration of the current permit. If the permittee allows their permit to lapse, they shall be required to submit a new application, pay corresponding fees and be subject to all aspects of the selection process. Because of the lateness in the year of the Public Hearing for this permit, the permit shall be valid until December 31, 2019.
14. As per Ordinance #2480, the use of vending machines to dispense cannabis is strictly prohibited. Any vending machines on the property must not contain cannabis or cannabis-based products.
15. The applicants shall provide or cause to be provided a trash enclosure on the property such that all waste is securely stored until it is removed from the premises. Access to this enclosure shall be provided to the City's Department of Public Works.
16. Key access and/or a Knox Box to the perimeter fence shall be provided to the City of Merced Fire Department, Department of Public Works, and Police Department.
17. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$100,000. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State standards and regulations.
18. The parking lot shall be repaved and restriped in compliance with the City of Merced's City Standard Designs.
19. If the applicants are unable to provide a FEMA flood elevation certificate showing that the top of the bottom floor and all equipment are at the required height as to not mandate mitigation measures if applicable, flood mitigation measures shall be required to meet the approval of the City flood plain manager and City Engineer.



20. There shall be no shared access to the building sharing a common wall with 863 W. 15th Street. Any existing shared access point must be sealed prior to the issuance of a Certificate of Occupancy.
21. The details of the final design of the exterior elevations and any signage shall be approved by Planning staff prior to issuance of a Certificate of Occupancy.
22. Future modifications to the scale, scope, activities, implementation, processes, materials, design, layout, or other factors pertaining to the operation of the project that are consistent with permits to perform activities related to operation of a retail dispensary of cannabis and cannabis-based products may be authorized with the approval of the City's Chief Building Official, Fire Chief, and Director of Development Services.

n:\shared\planning\PC Resolutions: CCBP #18-14R Exhibit A