



ADMINISTRATIVE REPORT

File #: 17-631

Meeting Date: 1/2/2018

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

SUBJECT: Adoption of Merit-Based Selection Criteria for Commercial Cannabis Business Permits (Limited Number of Permits Available)

REPORT IN BRIEF

The City Council is being asked to adopt, by resolution, the Merit-Based Selection Criteria for Commercial Cannabis Business Permits for which there are a limited number of permits available. Dispensaries/retail sales are limited to four in the recently adopted Ordinance.

RECOMMENDATION

City Council - Adopt a motion adopting **Resolution 2018-01**, a Resolution of the City Council of the City of Merced, California, approving Merit-Based Selection Criteria for Scoring Commercial Cannabis Business Permit Applications for which there are a limited number of permits available.

ALTERNATIVES

1. Approve the resolution as recommended by City staff; or,
2. Approve a modified resolution as revised by the City Council; or,
3. Deny the request; or,
4. Refer back to staff for reconsideration of specific items (specific items to be addressed in City Council motion); or,
5. Continue to a future City Council meeting (date and time to be specified in City Council motion).

AUTHORITY

Section 20.44.170(L)(c) of recently adopted Ordinance No. 2480 calls for the establishment of a merit-based scoring system to objectively award commercial cannabis business permits for which there are a limited number of permits available.

CITY COUNCIL PRIORITIES

On March 29, 2017, the City Council held a study session on priorities and medical marijuana regulations were listed under "City Administration-Current Projects."

DISCUSSION

Background

On November 20, 2017, the City Council introduced Ordinance No. 2480 which established regulations for Commercial Cannabis Businesses and the cultivation of cannabis for personal use in

the City of Merced. The Ordinance was adopted on December 4, 2017, and will be effective 30 days later on January 3, 2018.

Ordinance No. 2480 included Section 20.44.170(L)(c), which set forth that a merit-based scoring system is to be established to objectively award commercial cannabis business permits for which there are a limited number of permits available. Merced's Ordinance allows only four (4) Commercial Cannabis Business Permits for dispensaries/ retail sales.

Draft Merit-Based Selection Criteria

Draft versions of the Merit-Based Selection Criteria were included in the Planning Commission staff report for its consideration of the Draft Ordinance on November 8, 2017, and in the City Council Administrative Report for its consideration of the Draft Ordinance on November 20, 2017. However, at that time, the Planning Commission and City Council were not asked to adopt the Criteria, but only to provide comments on the drafts. The only comments received from the Planning Commission and City Council were to try to provide a "local preference" in the Criteria. City staff also received some comments from members of the public and the cannabis industry relating to the Criteria.

Based on the input received and after extensive review by City staff (including Planning and City Attorney staff) and SCI Consulting, a revised draft of the Merit-Based Selection Criteria is now available at Exhibit A of the City Council Resolution (Attachment 1). The revised Draft includes a number of the suggestions described above. Points have been added to address a preference for City residents as owners and employees, with a smaller number of points also available for those within Merced County or within 100 miles of Merced in some categories. Please note that the points are cumulative. For example, in Section 5, there are points awarded for prior experience with 1 point for 6 months to 1 year, 1 point for 1 to 3 years, 1 point for 3 to 5 years, and 2 points for over 5 years. Therefore, if an applicant has over 5 years of experience (Criteria 5d), they would be awarded a total of 5 points.

SCI and City staff believes that the draft Criteria provides a good balance between the desire to have highly successful cannabis businesses, to address neighborhood concerns, and to have preferences for local businesses. The City Council is being asked to review the Draft Criteria, provide any comments or suggestions, and then adopt the Resolution at Attachment 1.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed. However, adoption of the Ordinance (and the Merit-Based Selection Criteria) will likely increase the time commitments of City staff toward cannabis activities at the expense of other priorities or projects. Depending on the level of interest, the number of applications for Commercial Cannabis Business Permits may be significant, impacting mostly Planning Division staff, but will also impact the City Manager's office, the Police Department, Finance Department, and others. Ongoing resources will also need to be devoted to inspections and regulatory and enforcement activities of approved Commercial Cannabis businesses.

On December 18, 2017, the City Council was asked to adopt application fees to cover the cost of processing the Commercial Cannabis Business Permits and annual regulatory fees to cover the costs of ongoing inspections. A ballot measure to consider a tax related to cannabis is also

anticipated in 2018.

ATTACHMENTS

1. City Council Resolution with Selection Criteria as Exhibit A

RESOLUTION NO. 2018-____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
APPROVING MERIT-BASED SELECTION
CRITERIA FOR SCORING COMMERCIAL
CANNABIS BUSINESS PERMIT APPLICATIONS
FOR WHICH THERE ARE A LIMITED NUMBER
OF PERMITS AVAILABLE**

WHEREAS, the City Council of the City of Merced held a noticed public hearing on November 20, 2017, on proposed Ordinance No. 2480, at which time all those interested in the matter were provided the opportunity to speak or provide written or oral testimony regarding proposed Ordinance No. 2480, which amended the Zoning Ordinance (Title 20 of the Merced Municipal Code) to regulate all commercial cannabis activities and the cultivation of cannabis for personal use in the City of Merced; and

WHEREAS, after hearing all the evidence and testimony, on November 20, 2017, the City Council introduced Ordinance No. 2480. Ordinance No. 2480 was subsequently adopted on December 4, 2017, and will become effective 30 days later on January 3, 2018; and

WHEREAS, Ordinance No. 2480 included Section 20.44.170(L)(1), which sets forth a selection process for Commercial Cannabis Business Permits for Dispensaries/Retail Sales for which there is a limited number (4) of permits available. This selection process is based on the recommendations of a Selection Panel composed of the City Manager, Chief of Police, and Director of Development Services, or their designees, using a merit-based scoring system to be established by the City to objectively award permits to be used in the event that there are more applications than there are permits available.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCED AS FOLLOWS:

SECTION 1. That certain document entitled “Merit Based Selection Criteria for Commercial Cannabis Business Permits (Limited Number of Permits Available)”, attached hereto as Exhibit “A,” is hereby approved.

SECTION 2. The criteria herein shall become effective upon the date of this Resolution.

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

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
CITY CLERK

BY: _____
Assistant Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

A. Jones *12/16/17*
City Attorney Date

**Merit Based Selection Criteria for Commercial Cannabis Business Permits
(Limited Number of Permits Available)**

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 1: Prioritize Medicinal Cannabis Access		
a) Proposal for combined medicinal/adult use dispensary		4
b) Proposal for medicinal only dispensary		3
c) Proposal for non-medicinal/adult use dispensary only		0
d) Proposal includes Delivery Services		2
Section 1: Sub-Total of Points Possible		6
Section 2: Geographical Preference/Neighborhood Relations		
a) Proposed location is over 1,600 to 2,000 feet away from schools (City requires 1,000 feet)		1
b) Proposed location is over 2,000 feet or more away from schools		1
c) Proposed locations is within 1,200 feet of local public transportation		1
d) Proposal includes a process and schedule for at least two public outreach meetings per year that meet City approval		2
e) 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
f) Proposal includes the appointment of an employee as a designated liaison with the neighborhood		1
g) Designated liaison employee is a City resident		1
Section 2: Sub-Total of Points Possible		9
Section 3: Facility Plan		
a) Business is formally associated with a non-retail cannabis or non-cannabis-related (but non-alcohol or tobacco-related) business in the City of Merced		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
c) Location exceeds City parking requirements by 10% or more		1
d) Business is open more than five days a week at least 6 hours per day		1
e) Location exceeds minimum disabled parking requirements by 100% or more		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
Section 3: Sub-Total of Points Possible		8

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 4: Standards and Procedures for the Safe Operation of Facilities:		
a) Proposal includes documented employee safety training program		1
b) Proposal includes documented employee cannabis educational training program		1
c) Business plan includes enhanced security including at least two 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; or motion sensing lighting		2
d) Proposal includes climate controlled environment		1
e) Proposal includes plan for disposal of all solid waste based on best practices of the State		1
f) Proposal includes a comprehensive documented process for 24-hour minimum response time to cannabis product recall notifications		2
g) Proposal includes more than one on-site security guard during business hours		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
i) Proposal includes storage of inventory in a safe or vault (i.e. a strong, fireproof cabinet with a complex locking device)		1
j) 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
k) 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
l) Proposal includes participation in web-based public safety application or equivalent that provides law enforcement with confirmation of local and state licenses		1
m) Proposal includes any proposed "green" business practices relating to energy and climate, water conservation, and materials/waste storage		1
n) Proposal includes secured loading/unloading area for deliveries		1
Section 4: Sub-Total of Points Possible		19

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 5: Prior Experience in Business Ownership and Management		
a) Combined prior experience of proposed owners is between 6 months to 1 year of verified successful management of a legal retail cannabis facility		1
b) Combined prior experience of proposed owners is more than 1 year and up to 3 years of verified successful management of legal retail cannabis facility		1
c) Combined prior experience of proposed owners is more than 3 years and up to 5 years of verified successful management of legal retail cannabis facility		1
d) Combined prior experience of proposed owners is more than 5 years of verified successful management of legal retail cannabis facility		2
e) Combined prior experience of proposed owners is more than 3 years of verified successful management of any non-cannabis legal retail facility		2
f) Combined prior experience of proposed owners is more than 1 years and up to 3 years with a verified Mutual Benefit Non-Profit Corporation in compliance with California law		1
g) Combined prior experience of proposed owners is more than 3 years and up with a verified Mutual Benefit Non-Profit Corporation in compliance with California law		2
h) Above prior experience was obtained within the City or County of Merced		3
i) Above prior experience was obtained within 100 miles of the City of Merced		1
Section 5: Sub-Total of Points Possible		14
Section 6: Qualifications of Principals/Business Plan		
a) At least one owner is a military veteran with an honorable discharge		1
b) At least one owner is a full-time resident of the City of Merced		3
c) At least one owner is a full-time resident of the County of Merced (excluding the City of Merced)		1
d) Does the business qualify as a Disadvantaged Business Enterprise (DBE) as defined by the U.S. Department of Transportation		1
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
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
g) Business Plan contain a valid pro forma for at least 3 years of operation		2
h) Business has documented agreements with cannabis distributors to supply products to their business		2
Section 6: Sub-Total of Points Possible		16

<u>Description of Criteria:</u>	<u>Points Awarded</u>	<u>Points Possible</u>
Section 7: Employee Relations/Community Benefits		
a) The business promotes local hiring or provides incentives for City/County of Merced residents to work with the business		2
b) The business provides employee health benefits for all employees		1
c) The business employs more than 5 people full-time, not counting the owners or security personnel		1
d) Proposal includes an ongoing public information program to inform City residents of cannabis issues and proper/safe/legal use of cannabis products		2
e) Proposal includes benefits to the community, such as defined contributions or donating time to community organizations or charities		2
Section 7: Sub-Total of Points Possible		8
TOTAL POINTS POSSIBLE		80

Applicant Certification (Required)

Under penalty of perjury, I hereby declare that I have read and understood the criteria above and I have provided information relative to how my cannabis business addresses that criteria in the application or attached to this document. I declare that this information is completely true and accurate. I understand that a misrepresentation of fact is cause for rejection of this application, denial of the license, or revocation of a license issued.

Signed _____ Date _____

DISCLAIMER:

Although the City welcomes the applicant to suggest how many points they believe should be awarded in the "Points Awarded" column above, please note that the FINAL determination of how many points are awarded is at the sole discretion of the City's Selection Committee, made up of the City Manager, Police Chief, and the Director of Development Services or their designees. Final scores of the Committee members will be combined and divided by three for an average score. In the event of any tied scores, the Selection Committee will have the sole discretion to determine how to break the tie or to move forward recommendations with tied scores.

PLEASE NOTE THAT FAILURE OF THE PROPOSED OWNERS (ANYONE WITH OWNERSHIP INTEREST) TO SUCCESSFULLY PASS THE DETAILED PHASE 2 BACKGROUND CHECK TO THE SATISFACTION OF THE POLICE CHIEF WILL RESULT IN AUTOMATIC DISQUALIFICATION OF THE APPLICATION FROM FURTHER CONSIDERATION.