CITY OF MERCED
Planning Commission

MINUTES

Merced City Council Chambers
Wednesday, September 5, 2012

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present:	Dwight Amey, Mary Ward, Brandon Williams, and Chairperson Travis Colby
Commissioners Absent:	Kimberly Madayag (absent excused), Richard Cervantes (absent excused), and Carole McCoy (absent)
Staff Present:	Planning Manager Espinosa, Planner Nelson, Deputy City Attorney Rozell, and Recording Secretary Lane

1. APPROVAL OF AGENDA

M/S WARD-AMEY, and carried by unanimous voice vote (three absent), to approve the Agenda as submitted.

2. MINUTES

M/S WARD-AMEY, and carried by unanimous voice vote (three absent), to approve the Minutes of August 22, 2012, as submitted.

3. COMMUNICATIONS

None.

4. **ITEMS**

4.1 Conditional Use Permit #1172, initiated by Richard Salazar, property owner. This application involves a request to allow a nightclub within an existing bar at 3355 G Street, generally located on the west side of G Street, south of El Portal Drive, within Planned Development (P-D) #44 with a Commercial Office designation.

Planner NELSON reviewed the report on this item. She noted the receipt of one letter of opposition and one memo from staff correcting an error in the wording of Condition #20 in the staff report. Both of these documents were provided to the Commission prior to the meeting. For further information, refer to Staff Report #12-15.

Public testimony was opened at 7:12 p.m.

Speaker from the Audience in Favor:

RICHARD SALAZAR, the applicant and property owner, Merced

Speaker from the Audience in Opposition:

MARY GARCIA, Community Manager of the Plaza at El Portal Owners Association, Livermore

Public testimony was completed at 7:22 p.m.

Opposition focused on concerns regarding violence, vandalism, and property damage in the area, possibly caused by patrons from La Hacienda 2 and the possibility of raised insurance premiums and in turn, raised Owners Association dues as a result of insurance claims to repair the damaged property.

M/S WARD-AMEY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-22, and

approve Conditional Use Permit #1172, subject to the Findings and twenty-one (21) Conditions set forth in Staff Report #12-15, with the modification of Condition #20 as follows (RESOLUTION #3007):

"20. The nightclub use is considered an accessory use to the restaurant. The nightclub area is limited to the bar area and the lobby only. ~~, and restaurant area~~. This area shall not be increased without prior approval by the Director of Development Services, which may include referral to the Planning Commission. The restaurant area is not approved for nightclub use."

AYES: Commissioners Ward, Williams, Amey, and Chairperson Colby
NOES: None
ABSENT: Commissioners McCoy, Cervantes, and Madayag
ABSTAIN: None

4.2 Study Session/Public Input on Comprehensive Zoning Ordinance Update

BEN NOBLE, Associate Principal with Planning Center DC&E, a consultant hired by the City, provided an overview of and received comments on the Comprehensive Zoning Ordinance Update which will be taking place over the next year.

4.3 Cancellation of September 19 and October 3, 2012, Planning Commission Meetings due to Lack of Items

M/S COLBY-AMEY, and carried by unanimous voice vote (three absent), to cancel the Planning Commission Meetings of September 19 and October 3, 2012.

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. ADJOURNMENT

There being no further business, Chairperson COLBY adjourned the meeting at 7:53 p.m.

Respectfully submitted,

KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:

TRAVIS COLBY, Chairperson
Merced City Planning Commission

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CITY OF MERCED
Planning Commission

Resolution #3007

WHEREAS, the Merced City Planning Commission at its regular meeting of September 5, 2012, held a public hearing and considered **Conditional Use Permit #1172**, initiated by Richard Salazar, property owner. This application involves a request to allow a nightclub within an existing bar at 3355 G Street, generally located on the west side of G Street, south of El Portal Drive, within Planned Development (P-D) #44 with a Commercial Office designation; also known as Assessor's Parcel No. 236-280-008; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through H of Staff Report #12-15; 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 adopt a Categorical Exemption regarding Environmental Review #12-22, and approve Conditional Use Permit #1172, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Ward, seconded by Commissioner Amey, and carried by the following vote:

AYES: Commissioners Ward, Williams, Amey, and Chairperson Colby
NOES: None
ABSENT: Commissioners McCoy, Cervantes, and Madayag
ABSTAIN: None

Adopted this 5th day of September 2012

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:CUP#1172 Richard Salazar La Hacienda II nightclub

Conditions of Approval
Planning Commission Resolution #3007
Conditional Use Permit #1172

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) -- Attachment B of Staff Report #12-15, except as modified by the conditions.

2. All conditions contained in Resolution #1249-Amended ("Standard Conditional Use Permit Conditions"—except for Condition #16 which has been superceded by Code) shall apply.

3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

4. The Project shall comply with the conditions set forth in Resolution #2679 for Conditional Use Permit #1002 previously approved for this project.

5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

6. 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, 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 (with counsel selected by the City) 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.

7. 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.

8. The premises shall be maintained as a "bona fide restaurant" in compliance with Section 23038 of the Business and Professions Code and the requirements for a Type 47 Alcoholic Beverage Control (ABC) license during all times the premises is open to the public.

9. In accordance with state law, all alcohol sales shall end at 2:00 a.m.

10. The nightclub may operate from 10:00 p.m. to 2:00 a.m. The business shall close to the public at 2:00 a.m. and may not re-open to the public until 6:00 a.m. At 6:00 a.m., the business may open as a restaurant only and not a nightclub. In the event a private party is held at this location, the party shall end and all party-goers shall leave the premises by 2:00 a.m.

11. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.

12. No "adult entertainment" uses as defined in Merced Municipal Code (MMC) Section 20.90 shall be allowed on the premises.

13. Between the hours of 10:00 p.m. and 2:00 a.m., all nightclub patrons must be at least 21-years old.

14. The City reserves the right to periodically review the operation for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, lewd and/or disorderly conduct, and disturbing the peace result from the proposed land use, etc., the conditional use permit may be subject to review and revocation by the City of Merced per the procedures in the Merced Municipal Code.

15. Noise levels generated by the nightclub/entertainment venue shall be kept to a level not creating a public nuisance to the surrounding business establishments and/or immediate area. If noise-related complaints are received by the City of Merced, the conditional use permit may be subject to

review and possible revocation by the Planning Commission per the procedures in the Merced Municipal Code.

16. To prevent noise from carrying throughout the area, and especially to the nearby residential uses, the doors shall be kept closed except as patrons enter and exit. The doors shall not be propped open during business hours.

17. The applicant shall provide 1 security guard for each entrance/exit, 1 security guard to patrol the outside area, and 1 security guard per each 50 people inside during the nightclub hours. All security guards shall be hired from a company that has been approved by the Merced City Council and properly licensed through the City of Merced. All security guards are subject to approval of the Merced Police Department.

18. The business owner shall ensure the parking lot area used to serve this business is clean and free from all trash and debris at all times.

19. All signing shall be in compliance with the North Merced Sign ordinance. Unless the existing restaurant sign is reduced in size, no additional signing would be allowed for the nightclub. However, if the restaurant sign is reduced, it shall remain substantially larger than any sign identifying the nightclub.

20. The nightclub use is considered an accessory use to the restaurant. The nightclub area is limited to the bar area and the lobby only. This area shall not be increased without prior approval by the Director of Development Services, which may include referral to the Planning Commission. The restaurant area is not approved for nightclub use.

21. If the nightclub portion of the business and/or business owner changes from the current owner(s), a new application must be brought back to staff with possible referral to the Planning Commission for consideration.

n:shared:planning:PC Resolutions:CUP#1172 Exhibit A