

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, January 23, 2013

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, Kimberly Madayag, Carole McCoy, Brandon Williams, and Chairperson Travis Colby

Commissioners Absent: None (two vacancies)

Staff Present: Planning Manager Espinosa, Planner Nelson, Deputy City Attorney Rozell, and Recording Secretary Lane

1. **APPROVAL OF AGENDA**

M/S MCCOY-WILLIAMS, and carried by unanimous voice vote (two vacancies), to approve the Agenda as submitted.

2. **MINUTES**

M/S MCCOY-MADAYAG, and carried by unanimous voice vote (two vacancies), to approve the Minutes of December 5, 2012, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1178, initiated by Rick Souhrada on behalf of This Ain't Your Mama's Church, applicant for Richard and Suzanne Cordes, property owners. This application involves a request to allow a church to locate at 1405 W. Main Street generally located at the northwest corner of West Main and U Streets within a General Commercial (C-G) zone.

Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #13-04.

Public testimony was opened at 7:06 p.m.

Speaker from the Audience in Favor:

RICK SOUHRADA, the applicant, Merced

No one spoke in opposition to the project.

Public testimony was completed at 7:08 p.m.

M/S MADAYAG-MCCOY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-34, and approve Conditional Use Permit #1178, subject to the Findings and sixteen (16) Conditions set forth in Staff Report #13-04 (RESOLUTION #3015):

AYES: Commissioners McCoy, Madayag, Amey, Williams, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: None

- 4.2 Conditional Use Permit #1174, initiated by Steven Miller, applicant for Philip Reinero, property owner. This application involves a request to allow a nightclub and bar within an

existing building at 640 W. Main Street, generally located on the south side of Main Street, west of M Street, within a Central Commercial (C-C) zone.

Commissioner MCCOY recused herself due to a conflict of interest and left the dais.

Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #13-01 - Addendum.

Public testimony was opened at 7:19 p.m.

Speaker from the Audience in Favor:

STEVE MILLER, the applicant

No one spoke in opposition to the project.

Public testimony was completed at 7:21 p.m.

M/S WILLIAMS-COLBY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-30, and approve Conditional Use Permit #1174, subject to the Findings and thirty-two (32) Conditions set forth in Staff Report #13-01 - Addendum (RESOLUTION #3012):

AYES: Commissioners Madayag, Amey, Williams, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: Commissioner McCoy

Commissioner MCCOY rejoined the Commission on the dais.

4.3 Conditional Use Permit #1176, initiated by Bouasavonh Saenginh, applicant for BDC Merced, LP, property owner. This application involves a request to allow a Thai restaurant to sell beer and wine for on-site consumption within an existing

building, generally located within the Raley's Shopping Center at the southeast corner of G Street and Yosemite Avenue (3518 G Street), within Planned Development (P-D) #26 with a Neighborhood Commercial (CN) designation.

Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #13-02 - Addendum.

Public testimony was opened at 7:29 p.m.

Speaker from the Audience in Favor:

BRAD HALLIHAN, Atwater

No one spoke in opposition to the project.

Public testimony was completed at 7:34 p.m.

M/S MCCOY-MADAYAG, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-32, and approve Conditional Use Permit #1176, subject to the Findings and ten (10) Conditions set forth in Staff Report #13-02 - Addendum (RESOLUTION #3013):

AYES: Commissioners McCoy, Madayag, Amey, Williams, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: None

4.4 Conditional Use Permit #1177, initiated by David Wu for Changsing Enterprise, Inc., applicant for BDC Merced, LP, property owner. This application involves a request to allow a restaurant (Sushi Cuisine) to sell beer and wine for on-site consumption within an existing building, generally located within the Raley's Shopping Center at the southeast corner of G Street and Yosemite Avenue (3544 G Street), within Planned

Development (P-D) #26 with a Neighborhood Commercial (CN) designation.

Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #13-03 - Addendum.

Public testimony was opened at 7:38 p.m.

Speaker from the Audience in Favor:

DAVID WU, the applicant, Elk Grove

No one spoke in opposition to the project.

Public testimony was completed at 7:39 p.m.

M/S MADAYAG-WILLIAMS, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-33, and approve Conditional Use Permit #1177, subject to the Findings and nine (9) Conditions set forth in Staff Report #13-03 - Addendum (RESOLUTION #3014):

AYES: Commissioners McCoy, Madayag, Amey, Williams, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: None

4.5 Cancellation of February 6, 2013, Planning Commission Meetings due to Lack of Items

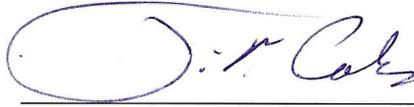
M/S COLBY-MADAYAG, and carried by unanimous voice vote (two vacancies), to cancel the Planning Commission Meeting of February 6, 2013.

PLANNING COMMISSION RESOLUTION # 3012

Page 2

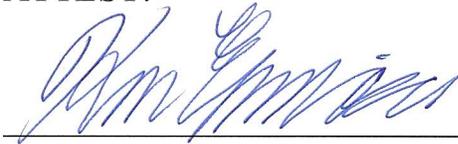
January 23, 2013

Adopted this 23<sup>rd</sup> day of January 2013



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:\shared\planning\PC Resolutions\CUP#1174 Reiner's Restaurant

**CITY OF MERCED  
Planning Commission**

**Resolution #3012**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2013, held a public hearing and considered **Conditional Use Permit #1174**, initiated by Steven Miller, applicant for Philip Reiner, property owner. This application involves a request to allow a nightclub and bar within an existing building at 640 W. Main Street, generally located on the south side of Main Street, west of M Street, within a Central Commercial (C-C) zone; also known as Assessor's Parcel No. 031-134-003; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through H of Staff Report #13-01; 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 #12-30, and approve Conditional Use Permit #1174, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Williams, seconded by Chairperson Colby, and carried by the following vote:

**AYES:** Commissioners Williams, Madayag, Amey, and Chairperson Colby

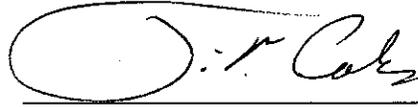
**NOES:** None

**ABSENT:** None (two vacancies)

**ABSTAIN:** Commissioner McCoy

January 23, 2013

Adopted this 23<sup>rd</sup> day of January 2013



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Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

**Conditions of Approval**  
**Planning Commission Resolution #3012**  
**Conditional Use Permit #1174**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan), Exhibit 2 (Building Elevation), and Exhibit 3 (Special Events Area) - Attachments C, E, and F of Staff Report #13-01, 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 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.
5. 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.

6. For any youth-related events, the applicant shall be responsible for curfew-related provisions of Chapter 9.24 of the Merced Municipal Code and ensuring that no alcohol is served to under-aged patrons.
7. Prior to opening the nightclub, the owner shall submit a floor plan with clearly marked dimensions of each area available for dancing to the Inspection Services Department for evaluation of the allowable occupant load. The owner shall comply with all applicable requirements of the Building and Fire Codes for the occupant loads determined from this evaluation.
8. In accordance with state law, all alcohol sales shall end at 2:00 a.m.
9. The premises shall be maintained as a “bona fide restaurant” in compliance with Section 23038 of the Business and Professions Code during all times the premises is open to the public.
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. 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.
19. If outdoor seating in the front of the building is desired, the applicant shall apply to the City Council for a Temporary Encroachment Permit.
20. If the outdoor area in the back of the building is used for special events or other activities for customers, the area shall be completely fenced off at the edge of the alley so no cars can park in this area. Sufficient lighting shall be provided in this area to maintain a safe environment as determined by the Police Department. This area shall be used for special events only and is not to be used on a regular basis as additional dining or dancing space. If alcohol is served in this area, the applicant shall comply with all rules from the California Alcoholic Beverage Control (ABC).
21. If problems arise from the use of outdoor area in the back of the building, the Development Services Director in consultation with the Police Chief and City Attorney, may prohibit the use of this area for activities other than parking.
22. Extra security personnel shall be provided for any events held in the outdoor area behind the building. There shall be a minimum of two security guards for every 50 people in the area. All security guards shall meet the requirements set forth in Condition 17.

23. No music (live or otherwise) or any other form of entertainment shall be permitted in the outdoor area after 9:00 p.m. nightly. Any amplification of music or other forms of entertainment shall be kept to a minimum prior to 9:00 p.m. nightly. Any amplification prior to 9:00 p.m. nightly shall not exceed a reasonable level to be heard in the immediate area.
24. Dancing shall not be allowed in the outdoor dining areas.
25. Alcohol shall not be served or consumed in the outdoor seating area after 10:00 p.m. This includes patrons bringing alcohol served inside to the outdoor area for consumption.
26. The business owner shall be responsible for ensuring the area around the business is kept clean and free of trash, debris, and graffiti.
27. If smoking is permitted outdoors, receptacles shall be available for ashes and cigarette butts and all applicable laws shall be enforced (i.e., distance from doorways, etc.). These receptacles shall not be located within the City right-of-way.
28. Any fencing installed for outdoor seating area in the back shall be painted to match the building. In addition, all fencing shall meet the requirements of the California Fire and Building Codes. The applicant shall provide a plan showing the location, height, all gates, and gate hardware to the Inspection Services Department for approval prior to installing the fence. The fencing shall be removable and shall be removed immediately after an event has concluded.
29. The missing brick veneer on the front of the building shall be replaced to provide a uniform appearance.
30. The existing sign in the window shall be removed and all new signing shall conform to the Merced Municipal Code.
31. The window coverings on the front windows shall be replaced to provide an aesthetically pleasing appearance.
32. All graffiti on the building shall be immediately removed. Graffiti shall be painted over with a paint color that matches the existing wall color. Any future graffiti shall be removed within 24 hours of the marking.

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

**Resolution #3013**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2013, held a public hearing and considered **Conditional Use Permit #1176**, initiated by Bouasavonh Saenginh, applicant for BDC Merced, LP, property owner. This application involves a request to allow a Thai restaurant to sell beer and wine for on-site consumption within an existing building, generally located within the Raley's Shopping Center at the southeast corner of G Street and Yosemite Avenue (3518 G Street), within Planned Development (P-D) #26 with a Neighborhood Commercial (CN) designation; also known as Assessor's Parcel No. 006-490-001; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through C of Staff Report #13-02; 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 #12-32, and approve Conditional Use Permit #1176, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner McCoy, seconded by Commissioner Madayag, and carried by the following vote:

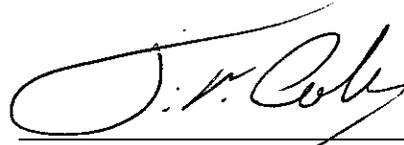
AYES: Commissioners McCoy, Williams, Madayag, Amey, and  
Chairperson Colby  
NOES: None  
ABSENT: None (two vacancies)  
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3013

Page 2

January 23, 2013

Adopted this 23<sup>rd</sup> day of January 2013



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

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

**Conditions of Approval**  
**Planning Commission Resolution #3013**  
**Conditional Use Permit #1176**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) -- Attachment B of Staff Report #13-02, 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. 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, 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.

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.
7. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation of the Conditional Use Permit (CUP) after a public hearing.
8. 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), the City of Merced, and other regulatory agencies.
9. The business shall operate as a “bona-fide” restaurant at all times. Per the Municipal Code, a bona-fide restaurant is required to serve a full-menu during all hours of operation.
10. If alcohol is served in the outdoor dining area adjacent to this tenant space, the area shall be approved for alcohol sales by the California Department of Alcoholic Beverage Control (ABC) and all alcohol sales in this area shall cease no later than 9:00 p.m.

n:shared:planning:PC Resolutions:CUP#1176 Exhibit A

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

**Resolution #3014**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2013, held a public hearing and considered **Conditional Use Permit #1177**, initiated by David Wu for Changsing Enterprise, Inc., applicant for BDC Merced, LP, property owner. This application involves a request to allow a restaurant (Sushi Cuisine) to sell beer and wine for on-site consumption within an existing building, generally located within the Raley's Shopping Center at the southeast corner of G Street and Yosemite Avenue (3544 G Street), within Planned Development (P-D) #26 with a Neighborhood Commercial (CN) designation; also known as Assessor's Parcel No. 006-490-001; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through C of Staff Report #13-03; 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 #12-33, and approve Conditional Use Permit #1177, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Madayag, seconded by Commissioner McCoy, and carried by the following vote:

AYES: Commissioners McCoy, Williams, Madayag, Amey, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

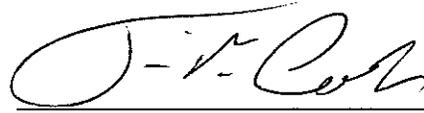
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3014

Page 2

January 23, 2013

Adopted this 23<sup>rd</sup> day of January 2013



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:CUP#1177 Sushi Cuisine

**Conditions of Approval**  
**Planning Commission Resolution #3014**  
**Conditional Use Permit #1177**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) -- Attachment B of Staff Report #13-03, 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 superseded 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. 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, 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.

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.
7. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation of the Conditional Use Permit (CUP) after a public hearing.
8. 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), the City of Merced, and other regulatory agencies.
9. The business shall operate as a “bona-fide” restaurant at all times. Per the Municipal Code, a bona-fide restaurant is required to serve a full-menu during all hours of operation.

n:shared:planning:PC Resolutions:CUP#1177 Exhibit A

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

**Resolution #3015**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 23, 2013, held a public hearing and considered **Conditional Use Permit #1178**, initiated by Rick Souhrada on behalf of This Ain't Your Mama's Church, applicant for Richard and Suzanne Cordes, property owners. This application involves a request to allow a church to locate at 1405 W. Main Street generally located at the northwest corner of West Main and U Streets within a General Commercial (C-G) zone; also known as Assessor's Parcel No. 031-093-003; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through G of Staff Report #13-04; 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 #12-34, and approve Conditional Use Permit #1178, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Madayag, seconded by Commissioner McCoy, and carried by the following vote:

**AYES:** Commissioners McCoy, Williams, Madayag, Amey, and Chairperson Colby

**NOES:** None

**ABSENT:** None (two vacancies)

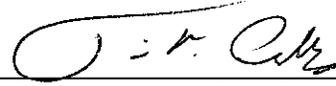
**ABSTAIN:** None

PLANNING COMMISSION RESOLUTION # 3015

Page 2

January 23, 2013

Adopted this 23<sup>rd</sup> day of January 2013



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Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

**Conditions of Approval**  
**Planning Commission Resolution #3015**  
**Conditional Use Permit #1178**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan), Exhibit 2 (parking plan) and Exhibit 3 (elevations) - Attachments B, C, and D of Staff Report #13-04, 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. 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, 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.

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.
7. The project shall comply with all Building and Fire Codes including those for assembly-type uses.
8. All signage for the building shall comply with the sign requirements for the Design Review Area and the General Regulations section of the Sign Ordinance. All temporary signing shall be approved by Planning Staff. No free-standing temporary signs (i.e., A-frame or sandwich board signs) shall be allowed.
9. In no instance shall any assembly area exceed an occupant load of 300 without meeting requirements set forth in the California Building and Fire Codes.
10. Because sufficient parking is not available on the site, the church shall enter into a parking agreement with the owner of the surrounding properties where parking will be provided. Parking shall be provided at a ratio of one parking space for each 3 ½ seats in the largest assembly area or one for each 15 classroom seats, whichever is greater. Parking shall be provided as long as a church use is located on this site. If sufficient parking is not provided, this church and any future churches will not be able to locate at this site. If the agreement is terminated for any reason, the church shall provide alternate parking immediately. If parking cannot be provided, the church shall find an alternate location within 120 days. A copy of the parking agreement shall be provided to the City of Merced Planning Department prior to occupancy.
11. Per MMC Section 17.36.810 and 17.36.820, churches are not allowed to advertise on pylon signs. Therefore, the church is limited to wall-mounted signing and shall not advertise on the existing pylon sign.
12. Any further expansion of the church use beyond the area shown as Phase 1 on Exhibit 1 (Attachment B of Staff Report #13-04) will require evaluation by the Inspection Services and Fire Departments to determine the potential need for fire sprinklers.
13. Prior to expanding the church's use of the building beyond the area shown as Phase 1 on Exhibit 1 (Attachment B of Staff Report #13-04), the church

shall provide to the Planning Department detailed information of the activities proposed for Phase 2 as shown on Exhibit 1 (Attachment B of Staff Report #13-04). If the Development Services Director determines the activities may increase the impact to the surrounding area or if the activities proposed are not in keeping with this approval, the expanded use may be referred back to the Planning Commission or the Site Plan Review Committee for approval.

14. If exterior changes are made to the building, they shall be subject to Design Review approval (either staff level or by the Design Review Commission as determined by staff).
15. All Church activities at this location shall be conducted within the building space.
16. The noise from music or other service activities shall be kept to a minimum so as not to disturb the surrounding neighborhood. If sufficient complaints are received regarding the noise from music or other activities, the church shall provide a means for suppressing the noise coming from the building. The means and method used shall be approved by City staff prior to installation.

n:shared:planning:PC Resolutions:CUP#1178 Exhibit A