# **CITY OF MERCED Planning Commission**

#### **MINUTES**

Merced City Council Chambers Wednesday, June 20, 2012

Chairperson CERVANTES 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: Carole McCoy, Kimberly Madayag, Mary Ward,

Dwight Amey, Bob Acheson, and Chairperson

**Richard Cervantes** 

Commissioners Absent: Travis Colby (absent)

Staff Present: Planning Manager Espinosa, Principal Planner

King, Planner Nelson, Plans Examiner Oswald, Fire Inspector Staiger, Deputy City Attorney

Rozell, and Recording Secretary Lane

### 1. **APPROVAL OF AGENDA**

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

## 2. **MINUTES**

M/S WARD-ACHESON, and carried by unanimous voice vote (one absent), to approve the Minutes of June 6, 2012, as submitted.

## 3. **COMMUNICATIONS**

None.

#### 4. **ITEMS**

4.1 Conditional Use Permit #1170, initiated by Khaled Dalia, property owner. This application involves a request to allow alcohol sales (beer and wine only) inside an existing market located at the southeast corner of T and 9<sup>th</sup> Streets (836 T Street), within a Neighborhood Commercial (C-N) Zone.

Planner NELSON reviewed the report on this item. She noted a petition and letter from Best Buy Market, in opposition to the project, that was received the day of the meeting. This was provided to the Commission prior to the meeting. For further information, refer to Staff Report #12-11.

Public testimony was opened at 7:09 p.m.

Speakers from the Audience in Favor:

KHALED DALIA, the applicant, Merced ROY T. DAVIS, Merced

No one spoke in opposition to the project.

Public testimony was completed at 7:13 p.m.

M/S WARD-MADAYAG, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-14, and approve Conditional Use Permit #1170, subject to the Findings and seventeen (17) Conditions set forth in Staff Report #12-11 (RESOLUTION #3004):

AYES: Commissioners McCoy, Madayag, Ward, Amey,

Acheson, and Chairperson Cervantes

NOES: None

**ABSENT:** Commissioner Colby

ABSTAIN: None

4.2 <u>Conditional Use Permit #1169, initiated by Firaz Jaber, applicant for Encina Investment Group Mainplace, property</u>

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owner. This application involves a request to allow a hookah lounge and dance club for ages 18 and over (no alcohol allowed) to locate at 435 W. Main Street, located approximately 125 feet east of Canal Street, within a Central Commercial (C-C) Zone.

Planner NELSON reviewed the report on this item. She noted two memos from planning staff. Due to a misinterpretation of the floor plan, there was a clarification to Condition #8 and Finding D. Condition #14 was modified and Condition #23 was added to ensure compliance with Merced County Health Department rules, regulations, and laws, and Merced County Environmental Health Department Labor Code requirements. For further information, refer to Staff Report #12-09 -Addendum.

Public testimony was opened at 7:41 p.m.

Speakers from the Audience in Favor:

GHALEB JABER, representing the applicant, Fresno EDDIE LAPLANTE, Atwater LARA JABER, Fresno

Speaker from the Audience in Opposition

RICK MCMILLION, Atwater

Public testimony was completed at 8:08 p.m.

The Commission discussed the matter and the majority agreed the item should be continued in order to allow staff time to contact the San Joaquin Valley Air Pollution Control District and inquire if they had any comments or regulations with regard to hookah lounges.

M/S WARD-MADAYAG, and carried by the following vote, to continue the public hearing to the Planning Commission Meeting of July 18, 2012.

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AYES: Commissioners McCoy, Madayag, Ward, Amey,

Acheson, and Chairperson Cervantes

NOES: None

ABSENT: Commissioner Colby

ABSTAIN: None

4.3 Bellevue Corridor Community Plan Overview to brief the Planning Commission of the effort by City Staff to draft the Bellevue Corridor Community Plan, applicant City of Merced, for a 2.4 square-mile area northeast of Merced generally located between "G" Street, Lake Road, Farmland Avenue and Cardella Road. The Planning Commission is also requested to select a representative to sit as a member of the Bellevue Corridor Community Plan Ad-hoc Advisory Committee.

Principal Planner KING gave a brief presentation on this item. For further information, refer to Staff Report #12-10.

M/S AMEY-MADAYAG, and carried by unanimous voice vote (one absent), to select Commissioner WARD to sit as a member of the Bellevue Corridor Community Plan Ad-hoc Advisory Committee.

4.4 <u>Cancellation of July 5, 2012, Planning Commission Meeting</u> due to Lack of Items and Holiday

M/S WARD-ACHESON, and carried by unanimous voice vote (one absent), to cancel the Planning Commission meeting of July 5, 2012.

#### 5. **INFORMATION ITEMS**

# 5.1 <u>Calendar of Meetings/Events</u>

Chairperson CERVANTES thanked Commissioner ACHESON for his eight years of service on the Planning Commission. Commissioner ACHESON said that he enjoyed working with staff and his fellow Commissioners. Planning Commission Minutes Page 5 June 20, 2012

#### 6. **ADJOURNMENT**

There being no further business, Chairperson CERVANTES adjourned the meeting at 8:48 p.m.

Respectfully submitted,

KIM ESPINOSA, Secretary

Merced City Planning Commission

APPROVED:

RICHARD CERVANTES, Chairperson Merced City Planning Commission

n:shared:Planning:PCMINUTE:Minutes 2012:M06-20-2012

# **CITY OF MERCED Planning Commission**

#### **Resolution #3004**

WHEREAS, the Merced City Planning Commission at its regular meeting of June 20, 2012, held a public hearing and considered Conditional Use Permit #1170, initiated by Khaled Dalia, property owner. This application involves a request to allow alcohol sales (beer and wine only) inside an existing market located at the southeast corner of T and 9<sup>th</sup> Streets (836 T Street), within a Neighborhood Commercial (C-N) Zone; also known as Assessor's Parcel No. 032-21-002; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through H of Staff Report #12-11; and,

**WHEREAS**, 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 #12-14, and approve Conditional Use Permit #1170, subject to the Conditions set forth in Exhibit A attached hereto.

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

AYES: Commissioners McCoy, Madayag, Ward, Amey, Acheson, and

Chairperson Cervantes

NOES: None

ABSENT: Commissioner Colby

ABSTAIN: None

# PLANNING COMMISSION RESOLUTION # 3004

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Adopted this 20th day of June 2012

Chairperson, Planning Commission of

the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:CUP#1170 Khaled Dalia Choice Food Market

# Conditions of Approval Planning Commission Resolution #3004 Conditional Use Permit #1170

- 1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) Attachment B of Staff Report #12-11, 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 #2113 for Conditional Use Permit #779 previously approved for this project.
- 5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- The developer/applicant shall indemnify, protect, defend (with counsel 6. 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 claims, actions, suits, proceedings, or judgments against 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. No sales of alcoholic beverages shall be allowed between the hours of 2:00 a.m. and 6:00 a.m.
- 9. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton.
- 10. "No Loitering" signs shall be placed on the building along the alley and the front of the store.
- 11. The proprietor and/or successors in interest and management shall be prohibited from externally advertising or promoting beer & wine and/or distilled spirits, including but not limited to, window and wall signage.
- 12. 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.
- 13. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws and other nuisance-related issues.
- 14. The City reserves the right to periodically review the area 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, disturbing the peace and disorderly conduct result from the proposed land use, the conditional use permit may be subject to review and revocation by the City of Merced after a public hearing and following the procedures outlined in the Merced Municipal Code.
- 15. Sufficient lighting shall be provided throughout the site to provide a safe environment for patrons of the market. If lighting does not currently exist, it shall be provided within 60 days of this approval. Details to be worked out with staff.

- 16. The premises shall remain clean and free of debris at all times.
- 17. All temporary signs shall be removed from the building and the parking lot area. Only temporary signs approved by the City Planning Department shall be allowed. All temporary signs shall comply with Merced Municipal Code Section 17.36.570.

n:shared:planning:PC Resolutions:CUP#1170 Exhibit A