

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, August 8, 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, Richard Cervantes, Kimberly Madayag, Carole McCoy, Mary Ward, Brandon Williams, and Chairperson Travis Colby

Commissioners Absent: None

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

1. **APPROVAL OF AGENDA**

M/S WARD-MCCOY, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S WARD-AMEY, and carried by unanimous voice vote, to approve the Minutes of July 18, 2012, as submitted.

3. **COMMUNICATIONS**

Commissioner WARD informed the audience that there were openings on the City of Merced Measure C Committee in case anyone was interested.

4. **ITEMS**

- 4.1 Conditional Use Permit #1169, initiated by Firaz Jaber, applicant for Encina Investment Group Mainplace, property 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 the receipt of two letters in favor of the project, one from Frank Quintero, Director of the City of Merced Economic Development Department, and the second from Edward P. Olf of Blackstone Chiropractic in Fresno. She also noted the receipt of an information handout in opposition to the project from Rick McMillion. All three of these documents were provided to the Commission prior to the meeting. For further information, refer to Staff Report #12-09 – 3<sup>rd</sup> Addendum.

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

Speakers from the Audience in Favor:

GHALEB JABER, representing the applicant, Fresno  
MIKE SIEGEL, Cigar Monkey, Merced  
LARA JABER, Fresno  
CHRIS OKAFOR-IZE, Merced  
AARON VEGA, Merced  
SARAH MILLHOFF, Merced  
EDDIE LAPLANTE, Atwater

Speakers from the Audience in Opposition:

RICK MCMILLION, Atwater  
MELISSA KELLY-ORTEGA, Merced

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

Speakers in favor asked that this business be given a chance as it would provide a venue for a legal activity not currently available for UC Merced students and others. Speakers in opposition did not support the business locating in this “family-friendly” area of Downtown.

Commissioner WARD disclosed that she received 3 insulting and harassing phone calls on this topic. The parties did not leave their names.

The Commission discussed the matter. The concerns were whether the business was a good fit for the downtown area and the proximity of the hookah lounge to businesses that sold or prepared food, attracted children, and were considered family-friendly. There was also concern that this business might be detrimental to surrounding businesses that were already established. Others felt that there were not sufficient reasons to deny the application since the only business to express an opinion about the project during the public hearings was in support of the project, and the project fit within the City’s land use policies, the Downtown Strategy, and the Economic Development Strategy.

Commissioner AMEY abstained from voting because he felt he could not vote for approval of the project based on his convictions, but he also felt that he could not vote for denial based on the Findings for denial and other material presented.

M/S WARD-MCCOY, to adopt a Categorical Exemption regarding Environmental Review #12-12, and deny Conditional Use Permit #1169, subject to Findings K through M set forth in Staff Report #12-09 – 3<sup>rd</sup> Addendum.

AYES: Commissioners McCoy and Ward

NOES: Commissioners Cervantes, Madayag, Williams, and Chairperson Colby

ABSENT: None

ABSTAIN: Commissioner Amey

The motion failed.

M/S CERVANTES-MADAYAG, to adopt a Categorical Exemption regarding Environmental Review #12-12, and approve Conditional Use Permit #1169, subject to Findings A through J and the twenty-three (23) Conditions set forth in Staff Report #12-09 – 3<sup>rd</sup> Addendum.

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

The motion failed, due to a lack of four affirmative votes.

[Secretary's note: Since the application failed to be approved by the Commission, the result was a denial.]

The applicant was informed of his right to appeal the decision to the City Council within 5 days.

M/S COLBY-MCCOY, to recommend a waiver of the administrative fee to appeal the decision to the City Council.

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

Commissioner WARD stated that she voted no since there were other projects in the past that had to pay the fee to appeal Planning Commission decisions and waiving the fee for this applicant might be construed as favoritism.

[Secretary's note: The Planning Commission cannot waive fees – only the City Council. Appeal fees are refunded if the appeal is successful.]

4.2 Nomination of a Planning Commission Representative to the Downtown Steering Committee

M/S WARD-AMEY, and carried by unanimous voice vote, to nominate Commissioner MCCOY as the Planning Commission Representative to the Downtown Steering Committee.

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

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

6. ADJOURNMENT

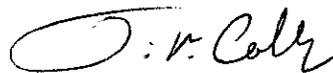
There being no further business, Chairperson COLBY adjourned the meeting at 8:19 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson  
Merced City Planning Commission