

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, October 18, 2017

Chairperson Dylina called the meeting to order at 7:02 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: **Sonia Alshami, Mary Camper, *Travis Colby, Robert Dylina, Jeremy Martinez, Peter Padilla, and Kevin Smith

*Commissioner Colby arrived at 8:13 p.m.

**Sonia Alshami's appointment to the Planning Commission has been deemed invalid; therefore, all actions she participated in must be re-heard.

Commissioners Absent: None

Staff Present: Director of Development Services McBride, Planning Manager Espinosa, Attorney Flores, Planner Mendoza-Gonzalez, Secretary III Lane, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

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

2. **MINUTES**

M/S SMITH-ALSHAMI**, and carried by unanimous voice vote (one absent), to approve the Minutes of October 11, 2017, as submitted.

[**Secretary's Note: Due to Sonia Alshami's appointment to the Planning Commission not meeting the requirements of the City Charter due to the lack of four affirmative votes, the approval of the previous meeting's Minutes will need to be reconsidered for validation.]

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1219, initiated by Madira Land Convenience Store on behalf of Olivewood Shopping Center, LLC, property owner. This application involves a request to sell beer and wine for off-site consumption at Madira Land Convenience Store, generally located on the south side of Olive Avenue, approximately 400 feet east of Austin Avenue (at 1340 W. Olive Ave., Ste. #102), within Planned Development (P-D) #16 with a Regional/Community Commercial (RC) General Plan designation.

Planner MENDOZA-GONZALEZ reviewed the report. He noted a memo from staff modifying Condition # 17, which was provided to the Commission prior to the meeting. For further information, refer to Staff Report #17-13.

Chairperson DYLINE asked to add a requirement to Condition #21 upon agreement of the Commission that would require "tamper-proof" external trash receptacles to be used.

Chairperson DYLINE also urged staff to provide a more comprehensive police incident report, as the dots used did not provide the number of incidents at each address for the Commission to consider. Commissioner SMITH suggested adding statistics of certain incidences beside the dots that represent those incidences.

Planner MENDOZA-GONZALEZ returned that staff would consult the GIS Technician at the Merced Police Department and attempt to design a color-coded incident map the next time a map is needed for a project.

Public testimony was opened at 7:20 p.m.

Speaker from the Audience in Favor:

RICK SINGH, Applicant, Atwater

No one spoke in opposition to the project.

Public testimony was completed at 7:24 p.m.

M/S ALSHAMI**-MARTINEZ, to adopt a Categorical Exemption regarding Environmental Review #17-09, and approve Conditional Use Permit #1219, subject to the Findings and twenty (21) Conditions set forth in Staff Report #17-13, with modification to Conditions #17 and #21 as follows:

(Note: ~~Strikethrough~~ deleted language, underline added language.)

“17. 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.”

“21. A permanent, tamper-proof, outdoor trash receptacles shall be installed near the main entrance to the convenience market.”

[**Secretary’s Note: Due to Sonia Alshami’s appointment to the Planning Commission not meeting the requirements of the City Charter, the votes on this item are not valid and the item must be re-heard.]

4.2 Conditional Use Permit #1220, initiated by All Pro Bail Bonds, applicant for Paul and Socorro Gonzales, Trustees, property owners. This application involves a request to relocate an existing bail bond company (All Pro Bail Bonds) from 611 W. Main Street to 735 W. 22nd Street, generally located on the north side of W. 22nd Street, approximately 200 feet west of N Street, within an Office Commercial (C-O) Zone.

Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #17-15.

Public testimony was opened at 7:37 p.m.

Speaker from the Audience in Favor:

MYLES KUIKAHI, applicant, Modesto

No one spoke in opposition to the project.

Public testimony was completed at 7:40 p.m.

M/S PADILLA-ALSHAMI**, to adopt a Categorical Exemption regarding Environmental Review #17-11, and approve Conditional Use Permit #1220, subject to the Findings and nine (9) Conditions set forth in Staff Report #17-15:

[**Secretary's Note: Due to Sonia Alshami's appointment to the Planning Commission not meeting the requirements of the City Charter, the votes on this item are not valid and the item must be re-heard.]

4.3 Zoning Ordinance Amendment #17-01, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would replace Merced Municipal Code Section 20.44.170 ("Medical Marijuana and Cultivation") with a new Section 20.44.170 ("Regulation of Commercial Cannabis Activities – Commercial Cannabis Business Permit Required"); amend Section 20.10.020 and Table 20.10-1 ("Commercial Zoning Districts"); amend Section 20.12.020 and Table 20.12-1 ("Industrial Zoning Districts"); and add Land Use Table 20.44-1 to regulate all commercial cannabis activities and cultivation for personal use in the City of Merced. In general, the regulations would allow Commercial Cannabis Businesses, including cultivation, distribution, manufacturing, deliveries, and dispensaries/retail sales, in certain zones with a Commercial Cannabis Business Permit.

Development Services Director McBRIDE addressed the Commission and explained the reason for the meeting. Mr. McBRIDE then addressed the members of the public and gave an overview of the timeline in place for the Draft Ordinance. He announced that City staff

and the consultants are present to answer questions regarding the draft ordinance from the Commission. In closing, Mr. McBRIDE addressed City staff and the Consultants of SCI and acknowledged the hard work involved in bringing the Draft Ordinance together.

Planning Manager ESPINOSA reviewed the report on this item. For further information, refer to Staff Report #17-14.

Chairperson DYLINA inquired about the change in the ordinance from using Health and Safety Code 10590 to the Penal Code for the applicant selection process. He received clarification from Attorney FLORES and deferred to Commissioner COLBY as it was his request to see this modified.

Commissioner COLBY responded that he did not agree with the change made. He expressed concern that it would allow applicants who have been convicted of offenses that include drugs that are more dangerous.

Commissioner CAMPER requested that during the Merit-Based Selection Process, staff inquire of the applicants past experience specifically with running a Dispensary as well as other businesses.

Chairperson DYLINA expressed concern that since medicinal products may be at low demand, dispensaries will not sufficiently stock their inventory with them.

NEIL HALL, SCI Consultants, addressed Chairperson DYLINA's concern. Mr. HALL explained that a majority of the products sold in dispensaries could be interchanged; furthermore, he stated that products mainly used for medicinal uses (that contain CBD over THC) do not degrade as quickly as the THC-based products.

Public testimony was opened at 8:45 p.m.

[Secretary's Note: The Commission took a brief recess before calling up speakers from 8:45 – 8:52 p.m.]

Speakers from the Audience in Favor:

ZACH DRIVAN, Drivan Consulting, Stockton, CA

DANIEL FRANKSTON, San Francisco, CA
JESSE KRAFT, Advantage Healing, Inc., Sonora, CA
SUSAN BOUSCAREN, Jack's Greenhouse, Merced
SETH SMITH, Santa Cruz Veterans Alliance, Santa Cruz, CA
DANIEL PULIDO, Merced

No one spoke in opposition to the project.

Public testimony was completed at 7:40 p.m.

Commissioner PADILLA expressed concern that restricting adult-use dispensaries in the C-O Zone would create problems, financially, for future businesses.

Chairperson DYLINA, in response to Commissioner PADILLA, recollected from the previous meeting that the C-O Zone was mainly designed for an office environment and was not intended for the type of foot traffic that a retail business experiences and deferred to Ms. ESPINOSA for confirmation.

Chairperson DYLINA asked Commissioner COLBY if he wanted to comment further on the use of the Penal Code 667.5 over the Health and Safety Code 11590 in the selection process. Commissioner COLBY elaborated on his concern that the City should be more careful on who would be allowed to apply. He explained that with this new change, there is a risk of allowing applicants who have been convicted of being a part of illicit and illegal drug businesses to operate legally in the City. He suggested that the City re-insert the Health and Safety Code 11590 in addition to Penal Code 667.5 and include a 10 year "wash-out" period for those who have been convicted of crimes listed under the two codes.

Chairperson DYLINA reiterated his concern of the low demand for medicinal products affecting access for patients who are in need of these products. He requested that staff include some form of minimal coverage for that use.

Commissioner PADILLA made a motion to recommend to the City Council adoption of a Categorical Exemption regarding Environmental

Review #17-10, and approval of Zoning Ordinance Amendment #17-01, modified as follows:

- All four dispensaries must be dual-use (both medicinal and recreational).
- The C-O Zone be open to include adult-use dispensaries.

The motion failed due to lack of a second to his motion.

Commissioner COLBY commented in opposition to Commissioner PADILLA's failed motion. He suggested that neither medicinal, nor recreational dispensaries should be allowed in the C-O zone. He urged that medicinal dispensaries are not really pharmacies due to the general demographic that frequent most dispensaries. He expounded that over the years of his career, he has encountered several cases of fraud and abuse regarding medicinal marijuana users and he stated that this particular issue would not likely change after the adoption of this ordinance. He urged the Commission and staff to keep this in mind as a reason to exclude all dispensaries from the C-O Zone.

Commissioner SMITH expressed a concern regarding the setbacks from City schools and requested that it be increased to 1,000 feet, rather than 600 feet. Commissioner COLBY concurred.

[Secretary's Note: Commissioner COLBY confirmed that he would be abstaining from voting on this issue due to a professional conflict.]

M/S ALSHAMI**-MARTINEZ, to recommend to the City Council adoption of a Categorical Exemption regarding Environmental Review #17-10, and approval of Zoning Ordinance Amendment #17-01, modified as follows:

- No Commercial Cannabis Businesses may be located within a 1,000-foot-radius from a school or within a 600-foot-radius of a day care center, recreational center, youth center, library, or public park.
- In addition to those provisions already listed in section 20.44.470 (E)(1)(e), applicants who have been convicted of

felony offenses listed in Health and Safety Code Section 11590 within 10 years from the day they apply shall also be excluded from consideration.

[**Secretary's Note: Due to Sonia Alshami's appointment to the Planning Commission not meeting the requirements of the City Charter, the votes on this item are not valid and the item must be re-heard.]

4.4 Election of Planning Commission Chairperson and Vice-Chairperson

Commissioner COLBY nominated Chairperson DYLINA to continue to be Chairperson and Commissioner MARTINEZ as Vice-Chairperson. Both Chairperson DYLINA and Commissioner MARTINEZ accepted the nominations. There were no other valid nominations for Chairperson or Vice-Chairperson.

M/S COLBY-PADILLA, and carried by the following vote, to elect Chairperson DYLINA to continue as Chairperson and to elect Commissioner MARTINEZ as Vice-Chairperson:

AYES: Commissioners Alshami**, Camper, Colby, Martinez, Padilla, Smith, and Chairperson Dylina

NOES: None

ABSENT: None

ABSTAIN: None

[**Secretary's Note: Although Sonia Alshami participated in the vote on this item, she did not make the motion or second. Since there were six affirmative votes without her vote, the item passed.]

4.5 Cancellation of November 8, 2017, Planning Commission Meeting due to lack of items and Cancellation of November 22, 2017, and December 20, 2017, Planning Commission Meetings due to the Holidays.

M/S PADILLA-ALSHAMI**, to cancel the Planning Commission meetings of November 8 and 22, 2017, and December 20, 2017.

[**Secretary's Note: Due to Sonia Alshami's appointment to the Planning Commission not meeting the requirements of the City Charter, the votes on this item are not valid and the item must be re-heard.]

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings.

6. **ADJOURNMENT**

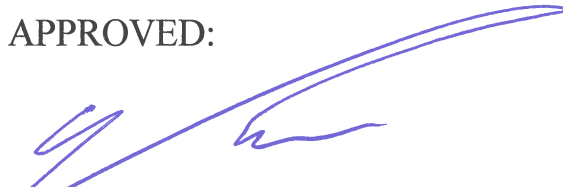
There being no further business, Chairperson DYLINA adjourned the meeting at 9:54 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



ROBERT DYLINA, Chairperson
Merced City Planning Commission