

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, December 6, 2017

Chairperson Dylina called the meeting to order at 7:03 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

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

Commissioners Absent: Sonia Alshami

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

1. **APPROVAL OF AGENDA**

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

2. **MINUTES**

M/S PADILLA-COLBY, and carried by unanimous voice vote (one absent), to approve the Minutes of November 8, 2017, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 (CONSENT) Vacation #17-01, initiated by Janet W. Bloed, Trustee, property owner, to abandon a 5-foot-wide Public Utilities Easement (PUE) near the eastern property line of 1297 Ahwahnee Drive.
- 4.2 (CONSENT) Vacation #17-02, initiated by Bill Lyons, applicant for Lyons Land and Cattle, Inc., property owner, and Ken Spagnola for CVP Acquisition, property owner, to abandon an existing 40-foot-wide “Avenue” located on the eastern edge of three parcels, generally located at the northeast corner of Childs Avenue and Kibby Road (4155 and 4315 East Childs Avenue) and the southeast corner of East Highway 140 and Kibby Road (1704 Kibby Road).

Secretary’s Note: Chairperson Dylina, along with the Planning Commission, decided to vote on items 4.1 and 4.2 simultaneously.

M/S SMITH-CAMPER, and carried by the following vote, to find that the proposed Vacations #17-01 (to abandon a 5-foot-wide Public Utilities Easement (PUE) near the eastern property line of 1297 Ahwahnee Drive) and #17-02 (to abandon an existing 40-foot-wide “Avenue” located on the eastern edge of three parcels, generally located at the northeast corner of Childs Avenue and Kibby Road (4155 and 4315 East Childs Avenue) and the southeast corner of East Highway 140 and Kibby Road (1704 Kibby Road), are consistent with the *Merced Vision 2030 General Plan*.

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

NOES: None

ABSENT: Commissioner Alshami

ABSTAIN: None

- 4.3 Modification to Conditional Use Permit #1214, initiated by Ferass Abu Ghaban and Abdullah Taleb, applicant for Promenade Center, Limited Partnership, property owner. This application

involves a request to modify an existing beer and wine ABC License to include the sale of liquor for onsite consumption at the Bobcat Diner, located at 755 E. Yosemite Avenue, Suite H, within the Promenade Shopping Center. The subject site is generally located at the northwest corner at Yosemite Avenue and Paulson Road, with a zoning classification of Planned Development (P-D) #48 and a General Plan designation of Neighborhood Commercial (CN).

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

Public Testimony was opened at 7:21 p.m.

Speaker from the Audience in Favor:

FERASS ABU GHABAN, Applicant, Merced

No one spoke in opposition to the Project.

Public Testimony was completed at 7:25 p.m.

M/S COLBY-SMITH, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #17-16, and approve a Modification of Conditional Use Permit #1214, subject to the Findings set forth in Staff Report 17-17, the fifteen (15) Conditions in Staff Report #16-18, and Condition # 16 set forth in Staff Report #17-17 (RESOLUTION #3074):

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

NOES: None

ABSENT: Commissioner Alshami

ABSTAIN: None

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**

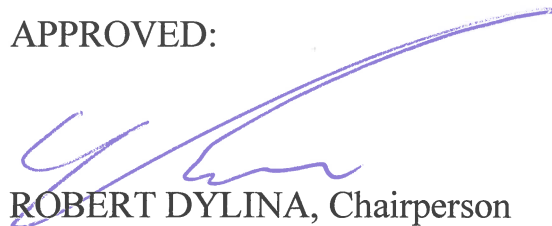
There being no further business, Chairperson DYLINA adjourned the meeting at 7:30 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



ROBERT DYLINA, Chairperson
Merced City Planning Commission

**CITY OF MERCED
Planning Commission**

Amended by PC on
12/6/2017. See
Pg. 3.

Resolution #3074

WHEREAS, the Merced City Planning Commission at its regular meeting of September 21, 2016, held a public hearing and considered **Conditional Use Permit #1214**, initiated by Ferass Abu Ghaban and Abdullah Taleb, applicants for Promenade Center, Limited Partnership, property owners. This application involves a request to allow the sale of beer and wine for on-site consumption at the Bobcat Diner, located at 755 E. Yosemite Avenue, Suite H, at the Promenade Shopping Center within Planned Development (P-D) #48 with a Neighborhood Commercial (CN) General Plan designation; also known as Assessor's Parcel Numbers 231-180-003; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #16-18; 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 #16-26, and approve Conditional Use Permit #1214, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners Baker, Colby, Dylina, Padilla, Smith, Smoot, and Chairperson McLeod

NOES: None

ABSENT: None

ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3074

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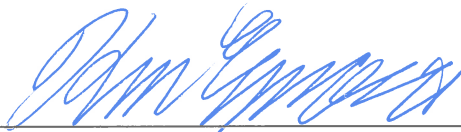
September 21, 2016 / December 6, 2017

Adopted this 21st day of September 2016



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

PLANNING COMMISSION RESOLUTION #3074

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September 21, 2016/December 6, 2017

December 6, 2017: At their regularly scheduled meeting of December 6, 2017, the Merced City Planning Commission considered Modification to Conditional Use Permit#1214 and Environmental Review #17-16.

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #17-17; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #17-16, and approve a Modification of Conditional Use Permit #1214 with the addition of Condition #16 as follows:

16. In addition to beer and wine, the restaurant shall now be allowed to sell liquor if they meet all applicable Alcoholic Beverage Control (ABC) requirements.

Upon motion by Commissioner Padilla, seconded by Commissioner Smith, and carried by the following vote:

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

NOES: None

ABSENT: Commissioner Alshami

ABSTAIN: None

Conditions of Approval
Planning Commission Resolution #3074
Conditional Use Permit #1214

Amended by PC on 12/6/2017.

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments B and C of Staff Report #16-18.
2. All conditions contained in Resolution #1249 (“Standard Conditional Use Permit Conditions”) 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 applicable conditions set forth in Planning Commission Resolution #2685 for Conditional Use Permit #1033 previously approved for the *Promenade* shopping center.
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. Alcoholic beverages shall not be allowed outside the building. A future outdoor seating area with alcohol service may be allowed with approval from both the Site Plan Review Committee and Alcoholic Beverage Control.
9. The restaurant shall meet all applicable Merced County Health Department requirements.
10. The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
11. This approval is for alcohol sales as an ancillary use to the primary restaurant only.
12. Request to operate as a nightclub, bar, or similar use shall require an additional review and approval from the Planning Commission (as required in the Zoning Ordinance).
13. 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 and following the procedures spelled out in the Merced Municipal Code.
14. Signs shall comply with the Master Sign Program for the Promenade Shopping Center.
15. Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.
16. In addition to beer and wine, the restaurant shall now be allowed to sell liquor if they meet all applicable Alcoholic Beverage Control (ABC) requirements.

Condition #16 added on 12/6/2017

n:shared:planning:PC Resolutions: Mod to CUP #1214 Exhibit A