

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #17-01

AGENDA ITEM: 4.3

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Jan. 18, 2017

PREPARED BY: Julie Nelson,
Associate Planner

SUBJECT: **Conditional Use Permit #1216**, initiated by Tongtoua Yang on behalf of Kajla Mahinder Singh, property owner. This application involves a request to increase the number of card tables for the Merced Poker Room (from 4 to 12) and to allow their employees to participate in gaming activities. The subject site is generally located on the south side of 15th Street, approximately 225 feet west of Martin Luther King, Jr. Way (at 1459 Martin Luther King, Jr. Way, Suites, 4, 5, and 6), within a Thoroughfare Commercial (C-T) zone. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #16-35 (Categorical Exemption)
- 2) Conditional Use Permit #1216

SUMMARY

The Merced Poker Room will soon be relocating from 1445 Martin Luther King, Jr. Way to 1459 Martin Luther King, Jr. Way (Attachment A). In November 2015, the Planning Commission approved this relocation which included approval of 4 tables and the sale of beer and wine for on-site consumption (additional details provided in the Background section of this report). Subsequent to this approval, the City Council approved an amendment to the City's Cardroom Ordinance which allowed an increase in the total number of tables allowed within the City from a total of 8 tables to 16 tables. Therefore, the applicant is now requesting approval to increase the number of tables at their new location from 4 tables to 12 tables (refer to the floor plan at Attachment B). If approved, the increase in tables would include eight tables with 9 seats (including the dealer) and four tables with five seats (not including the dealer) for a total of 89 seats for players and 12 dealers, or 101 seats at the card tables. In addition, there would be three tables with four seats each near the kitchen for dining and six seats at the bar.

The requested increase would secure the total number of additional tables allowed under the revised ordinance for this business. However, there is an additional cardroom within the City (Poker Flats) located at 1714 Martin Luther King, Jr. Way (Attachment C). The City received an application from this business requesting to add an additional 8 tables to their business as well. Only 8 additional tables may be added City-wide.

In addition to the request to add the tables to their business, the applicant is requesting approval to allow employees to participate in controlled games. The previous ordinance prohibited employees

from participating in games, but the new ordinance does not contain that prohibition. However, Planning Commission Resolution #3056 for Conditional Use Permit (CUP) #3056 includes Condition #20 which specifically prohibits employees from participating in games. Therefore, staff is recommending that CUP #1216 include a condition that would allow employees to participate in games.

It's staff's opinion that in the spirit of fairness to both businesses, each business should be allowed to split the 8 additional tables allowed under the new ordinance. Therefore, Planning Staff is recommending approval of an additional 4 tables for the Merced Poker Room, not the 8 as requested.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Conditional Use Permit #1216 (including the adoption of the Resolution at Attachment F) subject to the following conditions:

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment B, except as modified by the conditions.
- *2) All conditions contained in Resolution #1249-Amended ("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 conditions set forth in Resolution #3056 for Conditional Use Permit Application #1205 previously approved for this project, except as modified by these conditions.
- *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 (with counsel selected by the City), 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 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) This approval is for the addition of four card tables in addition to the four that were previously approved by Conditional Use Permit (CUP) #1205. No more than 8 card tables shall be allowed within this cardroom.
- 9) The City allows a total of sixteen card tables. Eight tables are approved for this location and the Poker Flats Cardroom at 1715 Martin Luther King, Jr. Way currently has four tables, but has submitted an application for the addition of eight more tables. Given the approval of an additional four tables for the Merced Poker Room, if the remaining four are not approved for the Poker Flats Card Room or if approved, the additional tables are not added within one year of the date of approval as required by Merced Municipal Code Section 9.08.020 (F), the owner of the Merced Poker Room may request the additional four tables through a Conditional Use Permit process.
- 10) This approval rescinds Condition #20 of Planning Commission Resolution #3056 for Conditional Use Permit #1205, and allows employees to participate in controlled games in compliance with any applicable state or local regulations.
- 11) If food and/or beverages are going to be served, a grease interceptor is required. If sufficient capacity is available in the grease interceptor installed with this building, this use may connect to the existing interceptor.
- 12) This site is not approved for a nightclub or bar. No dancing or music (other than background music for the cardroom) is allowed.
- *13) Maximum occupancy signs shall be posted as required by the California Building and Fire Codes.
- *14) In compliance with the conditions of approval for CUP #1205, if beer and wine are to be served for on-site consumption, the owner must obtain the appropriate license from the California Department of Alcoholic Beverages and approval from the City Council of a Finding of Public Convenience or Necessity.
- 15) All participants in the card games shall play with their own money.

The following conditions were included in the approval for CUP #1205, but are also applicable to this approval.

- 16) The business owner shall obtain all necessary permits and approvals from the Merced City Fire Department. The business owner shall contact the Merced City Fire Department at 61 E. 16th Street to obtain all necessary approvals.
- 17) The Merced Poker Room shall not operate at this location until it has vacated the existing location (1445 Martin Luther King, Jr. Way). Under no circumstances shall the Merced Poker Room operate at both locations.

- 18) No food shall be prepared on the premises without prior approval of the City's Inspection Services and Fire Departments and the Merced County Health Department. Prior to food being prepared on the premises, a commercial kitchen shall be installed.
- 19) If the Merced Poker Room is closed at this location for six months or more, this Conditional Use Permit shall expire and will no longer be valid.
- 20) If the Merced Poker Room moves to another permitted location within the City of Merced, this approval shall no longer be valid and shall terminate upon vacation of the premises by the Merced Poker Room.
- 21) The card room is approved to operate 24 hours per day.
- 22) The City reserves the right to periodically review the area for potential problems. If problems, including, but not limited to, excessive harassment, malicious property damage, lewd and/or disorderly conduct, arise as a result of the cardroom, this 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.
- 23) "No Loitering" signs shall be placed on the exterior of the building to deter non-patrons from gathering near the building.
- 24) Sufficient lighting shall be provided throughout the site to provide a safe environment for patrons of the cardroom.
- 25) The premises shall remain clean and free of debris at all times.
- 26) No one under the age of 21 shall be allowed to participate in card playing activities.
- 27) No owner or employee shall extend credit to card players.
- 28) The Merced Police Department reserves the right to conduct inspections of the cardroom during normal business hours to monitor compliance with all conditions of approval and state regulations.
- 29) The applicant shall install interior and exterior video surveillance cameras that continuously record both the inside and outside activities 24 hours a day, 7 days a week (locations to be worked out with the Police Department). Any video related to criminal investigations must be accessible immediately for viewing by the Merced Police Department or any other law enforcement agency. A recorded copy of surveillance video, requested in connection with a criminal investigation, must be reasonably accessible and available within 24 hours when requested by law enforcement. The business owner is responsible for maintaining the video surveillance equipment in an operable manner at all times.
- 30) Smoking is not allowed within 25-feet of the entrance to the building and the owner shall designate an exterior area that is available for smoking that is at least 25 feet from all business entrances. Receptacles acceptable for the disposal of smoldering remnants and discarded debris associated with smoking tobacco products (such as ashes and cigarette butts) shall be made available within this smoking area. The business owner shall be responsible for ensuring all applicable laws are enforced and adhered to and that signage is posted advising patrons of those rules.

- 31) A minimum of one security guard shall be provided in the cardroom area during business hours. The Police Department reserves the right to request additional security guards if any problems arise. 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.
- 32) Beer and wine only may be sold for on-site consumption in the cardroom. The business shall also provide a variety of non-alcoholic beverages for sale to patrons.
- 33) The business must have food available to patrons during the hours of operation, which may include having food brought in from nearby restaurants if food cannot be prepared on-site. Details to be worked out with staff.
- 34) In accordance with state law, no alcoholic beverages shall be sold between 2:00 a.m. and 6:00 a.m. of the same day.

(*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The applicant is requesting approval for an additional eight card tables to be located within the Merced Poker Room which will be relocating from 1445 Martin Luther King, Jr. Way to 1459 Martin Luther King, Jr. Way. In addition, the applicant is requesting that Condition #20 of Planning Commission Resolution #3056 for CUP #1205 be rescinded to allow employees to participate in controlled games.

Surrounding Uses
(Attachment A)

| Surrounding Land | Existing Use of Land | City Zoning Designation | City General Plan Land Use Designation |
|-------------------------|--|----------------------------------|---|
| North | In 'N Out Burger (across 15 th Street) | General Commercial (C-G) | General Commercial (CG) |
| South | Highway 99 | General Commercial (C-G) | General Commercial (CG) |
| East | Existing Merced Poker Room Location/Future Popeye's | Thoroughfare Commercial (C-T) | Thoroughfare Commercial (CT) |
| West | House of Furniture/ Smart & Final | Thoroughfare Commercial (C-T) | Thoroughfare Commercial (CT) |

BACKGROUND

Cardroom Regulations

In 1997, the State of California passed the Gambling Control Act. The Act requires the Department of Justice, Division of Gambling Control, to issue a state gambling license to all operating and new card rooms in order for them to operate in the state. One of the requirements of the Act is that the jurisdiction in which the card room is located has in place an ordinance with specific criteria specified. The City has had such an ordinance in place since 1998.

In 2005, the City received a letter from the Department of Justice indicating that specific changes to our ordinance were necessary to comply with State law. The City's ordinance was subsequently amended to comply with state law.

In April 2016, the City amended its cardroom ordinance again. This time, the ordinance was amended as follows:

- Increased the number of card tables allowed from 8 to 16;
- Allow an existing cardroom to increase the number of tables by up to 8 additional tables (subject to the overall limit of 16 card tables in the City and obtaining a CUP);
- Remove City-imposed limits on bets, wagers, and antes;
- Requires a cardroom with permission to expand the number of card tables to do so within one year of CUP approval; and,
- 24-hour operation was expanded from just the Thoroughfare Commercial (C-T) zone to include the Central Commercial (C-C) zone.

A copy of the revised ordinance is found at Attachment D.

History of Merced Poker Room

The Merced Poker Room was originally opened in 2006 at 2217 Yosemite Parkway. As a result of the Bradley Overpass Project and re-routing of Baker Drive, the poker room was forced to relocate in 2009. On September 9, 2009, the Planning Commission approved CUP #1137 which allowed the Merced Poker Room to move from 2217 Yosemite Parkway to 1445 Martin Luther King, Jr. Way. In 2011, the Merced Poker Room was taken over by a new owner, Tangtoua Yang (the applicant). On November 4, 2015, the Planning Commission approved CUP #1205 authorizing the Merced Poker Room to relocate to 1245 Martin Luther King, Jr. Way. This approval allowed the business to maintain their existing four tables and to add the sale of beer and wine subject to obtaining a license from the California Department of Alcoholic Beverage Control and a Finding of Public Convenience or Necessity from the City Council.

There is one other cardroom located in the City of Merced. This cardroom, Poker Flats Casino, is located 1714-1720 Martin Luther King, Jr. Way within a Central Commercial (C-C) zone. This cardroom also has approval for 4 tables, but does not operate 24 hours a day (hours of operation were previously limited in a C-C zone). This cardroom has submitted an application to increase the number of tables within their establishment by eight tables and to operate 24 hours. This request will come before the Planning Commission for consideration on February 22, 2017. Staff will recommend that only 4 additional tables be granted to this business as well.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Thoroughfare Commercial (CT) and the zoning designation of Thoroughfare Commercial (C-T), with a Conditional Use Permit.

Traffic/Circulation

- B) The project site is located just south of the intersection of Martin Luther King Jr. Way and West 15th Street, within the shopping center where House of Furniture and Smart and Final are located (the old K-Mart Shopping center). There are two driveways on 15th Street allowing access to the site and two driveways on 14th Street. The site can also be accessed from Martin Luther King, Jr. Way through the adjacent parcel where the cardroom is currently located.

The addition of eight tables as proposed would increase the number of seats in the card room from 36 to 81 (not including seats for the dealers). This increase would allow the business to have the ability to host tournaments and draw more people to the site. This could result in an increase in the traffic volume generated to this area. However, this section of Martin Luther King, Jr. Way is an arterial roadway designed to carry a large volume of traffic. The addition of traffic generated by the increase in tables would be very small in comparison to the total traffic volume on this roadway segment and would not create a significant impact to the traffic volume and circulation in the area. If only four additional tables are approved at this location, the impact would be even less.

Parking

- C) The new Zoning Ordinance provides a parking requirement of 1 parking space for each 2 ½ seats within a cardroom. As proposed, the addition of 8 tables would add an additional 81 seats for players plus an additional 12 seats for dining and 6 seats at the bar for a total of 99 seats for customers and players. In order to calculate parking, it is assumed that an additional seat would be provided for the dealers adding 12 more seats to the total (assuming 8 tables were approved). Based on a total of 111 seats, the use would be required to provide 44 parking spaces. If the Commission chooses to only approve four additional tables bringing the total number of tables for this poker room to 8, staff assumes each table would have eight seats for players and one seat for each dealer, plus the dining and bar area seats for a total of 90 seats requiring 36 parking spaces.

Based on Planning Department records, the shopping center provides 302 parking spaces. The House of Furniture and Smart and Final require 191 parking spaces. The other tenants approved for this building require 40 spaces, which leaves 71 spaces available within the shopping center. This is more than enough to meet the parking requirements for the cardroom whether approved for four or eight additional tables.

Building Design

- D) No changes are proposed to the exterior of the building. Interior changes would include the construction of restrooms, a small kitchen and bar area, an office, a cashier's area, a counting room and storage area. These changes have been approved with Building Permit #16-1104 and are consistent with the proposal approved by CUP #1205 allowing the relocation of the cardroom. The addition of the approved tables would be the only interior changes proposed.

Site Design

- E) There are no changes proposed to the existing site design.

Neighborhood Impact/Interface

- F) As previously mentioned, the approval of additional tables would provide a number of additional seats and increase the number of people coming to this area. Depending on the number of seats approved, the increase could range from 36 to 65 additional seats. In addition to the number of seats being added for players, the addition of tables may also increase the number of tournaments held at this site increasing not only the number of players, but possibly the number of spectators to the site.

This area is a fully developed commercial area and the site is located on a large parcel with other uses. The increase in the number of people and the traffic to the site could benefit some of the surrounding uses such as the restaurants, gas station, and grocery store.

Conditions are in place requiring security guards and allowing the Police Department to conduct inspections as deemed necessary (Conditions #31 and #28). There are also conditions requiring sufficient lighting to create a safe environment and for the owner to install video surveillance (Conditions #24 and #29).

Number of Tables

- G) The revised Cardroom Ordinance allows the addition of 8 tables within the City of Merced. The Ordinance does not distinguish how the additional tables are to be divided between the existing cardrooms operating within the City. Currently, both Merced Poker Room and Poker Flats, each have four tables making it an even split of the eight tables allowed under the previous ordinance.

Merced Poker Room submitted an application to increase the number of tables at their establishment by eight tables. Subsequently, Poker Flats submitted an application to increase their establishment by eight tables. Because the total number of additional tables allowed is eight, both establishments could not be approved to add eight tables. Staff recommends that the total number of additional tables allowed be divided equally between the two cardrooms. This would allow each establishment to increase their number of tables from four to eight tables. There is no limit on the number of seats provided (other than what would be required by the Building and Fire Codes), so it's still possible one cardroom could have more players than the other, but the total number of tables would still remain equal.

Signage

- H) All signing shall comply with the City's Zoning Ordinance. The primary frontage for this tenant space would be allowed signing at a ratio of 1 square foot of signing for each linear foot of building frontage (i.e., a 50-foot-wide building would be allowed 50 square feet of signing). In addition, ½ square foot of signing is allowed for each linear foot of secondary building frontage (i.e., if the secondary frontage is 50 feet long, the tenant would be eligible for 25 square feet. of signing). For this site, the primary frontage would be considered the

southern elevation where the entrance to the building is, and the secondary frontage would be the northern elevation facing 15th Street.

Environmental Clearance

- I) The Planning staff has conducted an environmental review (#16-35) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e., no significant adverse environmental effects have been found) is being recommended (Attachment L).

Attachments:

- A) Location Map
- B) Floor Plan – Merced Poker Room
- C) Location of Poker Flats Cardroom
- D) MMC Section 9.08.020
- E) Categorical Exemption
- F) Draft Planning Commission Resolution

Ref: N:\SHARED\PLANNING\STAFFREP\SR2017\SR 17-01 (1459 MLK - cardroom).docx



MAIN

16TH

CANAL

House of Furniture/
Smart & Final

In 'n Out
Burger

15TH

SUBJECT
SITE

Existing
Merced
Poker Room

MARTIN LUTHER KING JR

14TH

COLONY

99

99

99

99

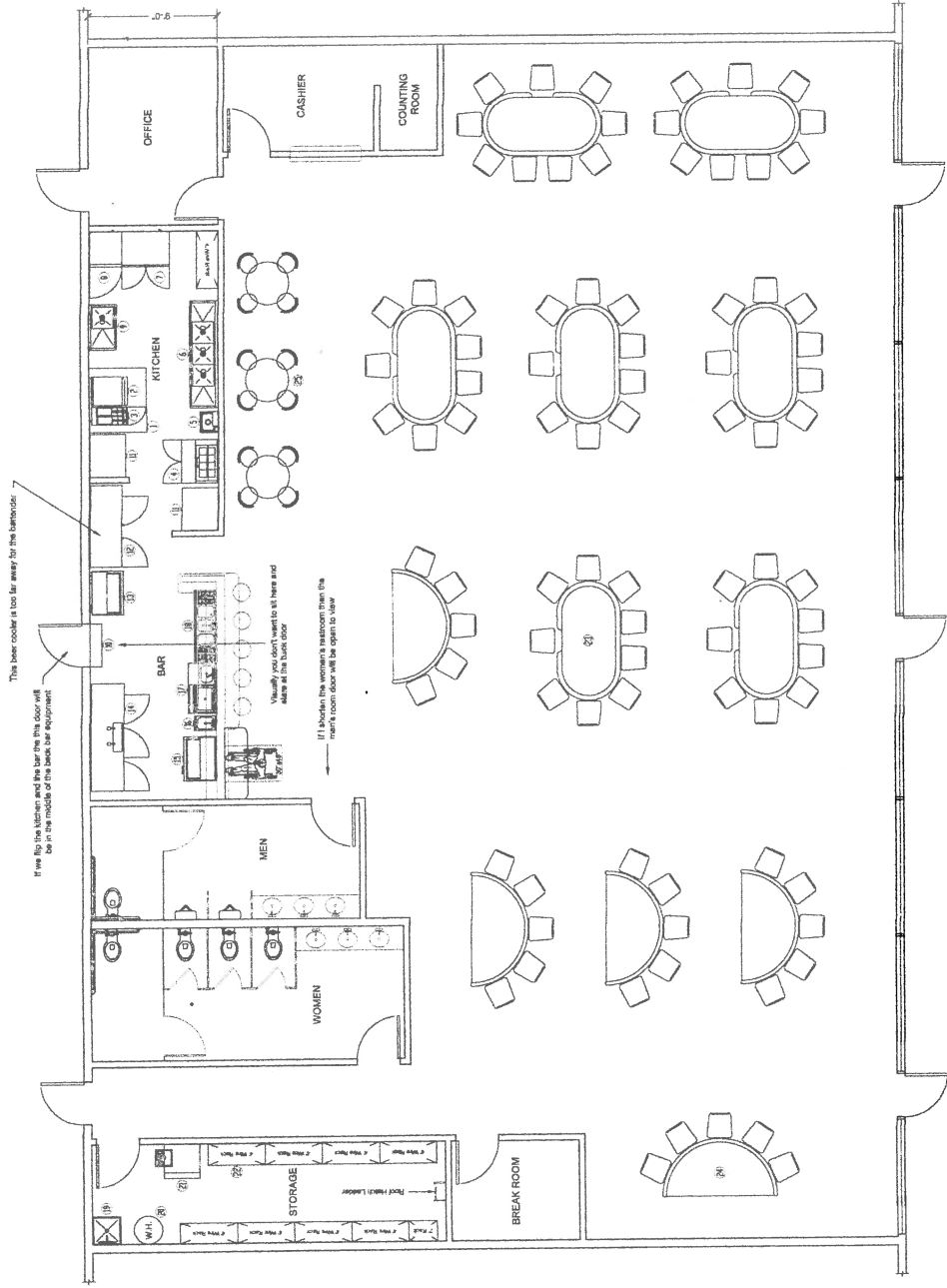
13TH

K



12TH

ATTACHMENT A



ATTACHMENT B



18TH

Poker Flats
Cardroom

MAIN

MARTIN LUTHER KING JR

16TH

ATTACHMENT C



9.08.020 - Cardrooms.

- A. Cardrooms in the City of Merced may only be located in areas zoned as follows:
 - 1. Central Commercial (C-C);
 - 2. Commercial Thoroughfare (C-T);
 - 3. General Commercial (C-G).
- B. It is unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.12 of this Code, for any person, either as principal, agent, employee, or otherwise, to play, conduct, or deal any game of cards in any cardroom, or in any other public place or place resorted to generally by the public, between the hours of two a.m. and six a.m. of any day, with the exception of a duly licensed cardroom operating in a Commercial Thoroughfare (C-T) zone or Central Commercial (C-C) zone pursuant to a conditional use permit which regulates the hours of operation.
- C. Any person operating a cardroom shall be responsible and liable for patron security and safety in and around the gaming establishment. Security guards shall be provided in such number and at such times as directed by the chief of police, or as may otherwise be required by conditional use permit.
- D. As of April 18, 2016, there are two cardrooms authorized to operate within the City of Merced, each of which had four (4) card tables. There shall be no increase in the existing number of cardrooms without the approval of a majority of the voters of the city.
- E. The city hereby increases the number of authorized card tables within the city from eight (8) card tables to sixteen (16) card tables. There shall be no increase in the number of card tables beyond sixteen (16) card tables without the approval of a majority of the voters of the city.
- F. In order for a cardroom to increase the number of card tables from the four (4) card tables that existed as of April 18, 2016, the operator must first obtain a conditional use permit to add additional card tables. A cardroom operator may apply for up to eight (8) additional card tables subject to the overall limit of sixteen (16) card tables within the city; provided, however, that under no circumstances shall a cardroom have more than twelve (12) card tables.
- G. If a cardroom operator obtains a conditional use permit to add additional card tables, the new card tables must be added within one (1) year from the date of approval of the conditional use permit. Otherwise, the right to add the additional card tables shall automatically expire and the number of card tables allowed in that cardroom shall revert back to the number of card tables that existed prior to the approval of the conditional use permit.
- H. There shall be no city-imposed limits on bets and wagers in a cardroom located within the city. Individual cardroom operators may set their own limits on bets and wagers. The rules of each game and wagering limits shall be clearly posted at the gaming tables where the games are offered to provide the patrons adequate notice of such rules and limits.

NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

X County Clerk
County of Merced
2222 M Street
Merced, CA 95340

Project Title: Conditional Use Permit #1216 (Environmental Review #16-35)

Project Applicant: Tongtoua Yan for Kajla Mahinder Singh.

Project Location (Specific): 1459 Martin Luther King, Jr. Way, Suites 4, 5, & 6

APN: 031-241-029

Project Location - City: Merced

Project Location - County: Merced

Description of Nature, Purpose, and Beneficiaries of Project:

Addition of card tables to an existing cardroom

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Tongtoua Yang

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- X Categorical Exemption. State Type and Section Number: Section 15301 (a)
- Statutory Exemptions. State Code Number: _____.
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: As defined under the above referenced Section, the proposed project consists of minor interior alterations to an existing structure which are considered to be exempt under the CEQA Guidelines per Section 15301 (a)

Lead Agency: City of Merced

Contact Person: Julie Nelson, Planner

Area Code/Telephone: (209) 385-6858

Signature:  **Date:** 1-11-17 **Title:** Associate Planner

X Signed by Lead Agency Date Received for Filing at OPR: _____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

CITY OF MERCED
Planning Commission

Resolution #_____

WHEREAS, the Merced City Planning Commission at its regular meeting of January 18, 2017, held a public hearing and considered **Conditional Use Permit #1216**, initiated by Tongtoua Yang on behalf of Kajla Mahinder Singh, property owner. This application involves a request to increase the number of card tables for the Merced Poker Room (from 4 to 12) and to allow their employees to participate in gaming activities. The subject site is generally located on the south side of 15th Street, approximately 225 feet west of Martin Luther King, Jr. Way (at 1459 Martin Luther King, Jr. Way, Suites, 4, 5, and 6), within a Thoroughfare Commercial (C-T) zone.; also known as Assessor's Parcel Number 031-241-029; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through I of Staff Report #17-01; 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 #16-35, and approve Conditional Use Permit #1216, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

PLANNING COMMISSION RESOLUTION # _____

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January 18, 2017

Adopted this 18th day of January 2017

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions: CUP#1216 Merced Poker Room (1459 MLK Jr Wy)

Conditions of Approval
Planning Commission Resolution # _____
Conditional Use Permit #1216

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment B of Staff Report #17-01, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“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 conditions set forth in Resolution #3056 for Conditional Use Permit Application #1205 previously approved for this project, except as modified by these conditions.
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 (with counsel selected by the City), 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 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. This approval is for the addition of four card tables in addition to the four that were previously approved by Conditional Use Permit (CUP) #1205. No more than 8 card tables shall be allowed within this cardroom.
9. The City allows a total of sixteen card tables. Eight tables are approved for this location and the Poker Flats Cardroom at 1715 Martin Luther King, Jr. Way currently has four tables, but has submitted an application for the addition of eight more tables. Given the approval of an additional four tables for the Merced Poker Room, if the remaining four are not approved for the Poker Flats Card Room or if approved, the additional tables are not added within one year of the date of approval as required by Merced Municipal Code Section 9.08.020 (F), the owner of the Merced Poker Room may request the additional four tables through a Conditional Use Permit process.
10. This approval rescinds Condition #20 of Planning Commission Resolution #3056 for Conditional Use Permit #1205, and allows employees to participate in controlled games in compliance with any applicable state or local regulations.
11. If food and/or beverages are going to be served, a grease interceptor is required. If sufficient capacity is available in the grease interceptor installed with this building, this use may connect to the existing interceptor.
12. This site is not approved for a nightclub or bar. No dancing or music (other than background music for the cardroom) is allowed.
13. Maximum occupancy signs shall be posted as required by the California Building and Fire Codes.
14. In compliance with the conditions of approval for CUP #1205, if beer and wine are to be served for on-site consumption, the owner must obtain the appropriate license from the California Department of Alcoholic

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #_____

Beverages and approval from the City Council of a Finding of Public Convenience or Necessity.

15. All participants in the card games shall play with their own money.
16. The following conditions were included in the approval for CUP #1205, but are also applicable to this approval.
17. The business owner shall obtain all necessary permits and approvals from the Merced City Fire Department. The business owner shall contact the Merced City Fire Department at 61 E. 16th Street to obtain all necessary approvals.
18. The Merced Poker Room shall not operate at this location until it has vacated the existing location (1445 Martin Luther King, Jr. Way). Under no circumstances shall the Merced Poker Room operate at both locations.
19. No food shall be prepared on the premises without prior approval of the City's Inspection Services and Fire Departments and the Merced County Health Department. Prior to food being prepared on the premises, a commercial kitchen shall be installed.
20. If the Merced Poker Room is closed at this location for six months or more, this Conditional Use Permit shall expire and will no longer be valid.
21. If the Merced Poker Room moves to another permitted location within the City of Merced, this approval shall no longer be valid and shall terminate upon vacation of the premises by the Merced Poker Room.
22. The card room is approved to operate 24 hours per day.
23. The City reserves the right to periodically review the area for potential problems. If problems, including, but not limited to, excessive harassment, malicious property damage, lewd and/or disorderly conduct, arise as a result of the cardroom, this 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.
24. "No Loitering" signs shall be placed on the exterior of the building to deter non-patrons from gathering near the building.
25. Sufficient lighting shall be provided throughout the site to provide a safe environment for patrons of the cardroom.
26. The premises shall remain clean and free of debris at all times.

27. No one under the age of 21 shall be allowed to participate in card playing activities.
28. No owner or employee shall extend credit to card players.
29. The Merced Police Department reserves the right to conduct inspections of the cardroom during normal business hours to monitor compliance with all conditions of approval and state regulations.
30. The applicant shall install interior and exterior video surveillance cameras that continuously record both the inside and outside activities 24 hours a day, 7 days a week (locations to be worked out with the Police Department). Any video related to criminal investigations must be accessible immediately for viewing by the Merced Police Department or any other law enforcement agency. A recorded copy of surveillance video, requested in connection with a criminal investigation, must be reasonably accessible and available within 24 hours when requested by law enforcement. The business owner is responsible for maintaining the video surveillance equipment in an operable manner at all times.
31. Smoking is not allowed within 25-feet of the entrance to the building and the owner shall designate an exterior area that is available for smoking that is at least 25 feet from all business entrances. Receptacles acceptable for the disposal of smoldering remnants and discarded debris associated with smoking tobacco products (such as ashes and cigarette butts) shall be made available within this smoking area. The business owner shall be responsible for ensuring all applicable laws are enforced and adhered to and that signage is posted advising patrons of those rules.
32. A minimum of one security guard shall be provided in the cardroom area during business hours. The Police Department reserves the right to request additional security guards if any problems arise. 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.
33. Beer and wine only may be sold for on-site consumption in the cardroom. The business shall also provide a variety of non-alcoholic beverages for sale to patrons.
34. The business must have food available to patrons during the hours of operation, which may include having food brought in from nearby

restaurants if food cannot be prepared on-site. Details to be worked out with staff.

35. In accordance with state law, no alcoholic beverages shall be sold between 2:00 a.m. and 6:00 a.m. of the same day.

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