

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #19-30

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Dec. 4, 2019

PREPARED BY: Francisco Mendoza-Gonzalez,
Associate Planner

SUBJECT: **Conditional Use Permit #1236**, initiated by Daniel Cortez on behalf of Seven Eleven, Inc., property owner. This application involves a request to operate a food truck within the Valero parking lot, generally located on the northeast corner of G Street and E. Alexander Avenue (3006 G Street), within a Office Commercial (C-O) Zone. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #19-31 (Categorical Exemption)
- 2) Conditional Use Permit #1236

SUMMARY

Daniel Cortez is requesting conditional use permit approval to operate a food truck within the Valero parking lot located at 3006 G Street (Attachment A). Mobile Food Vendors are considered a conditional use within an Office Commercial (C-O) Zone. The proposed food truck would be located within a parking lot near the northern portion of the parcel (Attachment B). The food truck would operate daily between 7:00 a.m. and 9:00 p.m., as allowed by the City's Zoning Ordinance. The Planning Commission will be reviewing this proposal to ensure that the new site plan is designed in a manner that minimizes negative impacts to the existing site and promotes compatible and orderly development. Staff is recommending approval of this request subject to the conditions of approval outlined below.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #19-31 (Categorical Exemption) and Conditional Use Permit #1236 (including the adoption of the Resolution at Attachment G) subject to the following conditions:

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (photos) - Attachments B and C of Staff Report #19-30, 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in Resolution #1249-Amended ("Standard Conditional Use Permit Conditions"—except for Condition #16 which has been superseded by Code) shall apply.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) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- *5) 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.
- *6) 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.
- *7) The applicant shall comply with all City of Merced business licensing requirements and with all requirements of the Merced County Environmental Health Department.
- 8) No outdoor tables or chairs shall be permitted on the premises, unless otherwise approved by the Planning Department in consideration of all relevant parking and vehicle circulation areas on this site.
- 9) At least two tamperproof trash receptacles shall be provided while food is being served. The site and the immediate surrounding area shall be maintained free of all debris and trash generated from this use.
- 10) All signing shall be contained on the food truck. No A-frame signs, banners, inflatable signs, feather signs, pennant signs, flags, or other moving or portable signs shall be permitted for this use anywhere on or off the site.
- 11) The hours of operation shall be any span of time between 7:00 a.m. and 9:00 p.m. and the business may be open 7 days a week. However, if the business is open after dark, lights

- shall be provided on the vehicle or on the property that are sufficient to light the vehicle and at least a 50-foot radius around the vehicle. If lights are not provided, the foodtruck shall close at sundown.
- 12) If the business owners wish to extend the business hours in the future, they must obtain approval from the Development Services Director and the Police Chief, or if deemed necessary by the Development Services Director, be referred back to the Planning Commission for action.
 - *13) Disposal of waste products shall be limited to a Merced County Environmental Health Department approved commissary or alternative approved facility.
 - *14) The applicant shall comply with the Water Quality Control Division's (WQCD) Best Management Practices regarding the disposal of cooking grease and proper cleaning of kitchen equipment, as shown on Attachment D of Staff Report #19-30, or as otherwise required by the WQCD.
 - 15) If problems arise as a result of this business that may require excessive Police Department service calls to the site or within the immediate area including, but not limited to, excessive harassment, malicious property damage, lewd and/or disorderly conduct, this approval may be subject to review and revocation by the City of Merced.
 - 16) During hours of operation, food truck employees shall have access to a cell phone (either their own or one provided by the business owner) in case of emergencies.
 - 17) In the future, if there are excessive calls for police assistance, the Police Chief may require the applicant to install exterior video surveillance cameras. 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.
 - 18) The food truck shall be oriented perpendicular to the parking stalls to allow room for customers to gather without being in danger of collisions from vehicles entering/exiting the site. The food truck shall not block the driving aisle or access to the alley.
 - 19) It shall be the operator's responsibility to ensure all customers park in an orderly fashion and don't block the driveway entrances or interfere with other customers visiting the site.
 - 20) The applicant shall comply with all regulations found in Merced Municipal Code Section 20.44.020 - Food Trucks in Fixed Locations, except as modified by these conditions.
 - 21) A minimum of 2 parking spaces on the site shall be dedicated to food truck customers. These spaces shall be located as close as possible to the food truck.
 - 22) Food truck activities shall in no way interfere with the operation of existing businesses on the lot, or nearby businesses, including noise, litter, loitering, and traffic circulation, refuse service, and public safety.

- *23) The owner shall ensure that restroom facilities are available for the employees. These restrooms shall be provided in a permanent building that meets the Health Department’s requirements for distance from the business operation. Portable toilets shall not be allowed.
- 24) The mobile food vendor is prohibited from selling alcohol.
- 25) “No Loitering” signs shall be posted on the food truck and convenience market at specific locations approved by the City Police Department.
- 26) The food truck shall maintain a minimum distance of 20 feet from all fuel pumps, or as otherwise required by Fire Department.
- 27) Any illegal signs and advertisements posted on the convenience market onsite shall be removed prior to the food truck obtaining a business license.

(*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The applicant is proposing to operate a food truck within the Valero parking lot located at 3006 G Street (Attachment A). The food truck would be located within a parking lot near the northern portion of the parcel, and be oriented in a manner that does not block driving aisles or fire lanes (Attachment B). The food truck would operate daily between 7:00 a.m. and 9:00 p.m., as allowed by the City’s Zoning Ordinance (Merced Municipal Code 20.44.020). Employee restrooms would be located inside the convenience market, as allowed by the Merced County Environmental Health Department. The sale of alcohol by the food truck is prohibited (Condition #24).

Surrounding Uses
(Attachment A)

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	Farmers Insurance	Office Commercial (C-O)	Office Commercial (CO)
South	G Street Auto Care (across Alexander Ave.)	Office Commercial (C-O)	Office Commercial (CO)
East	Single-Family Home	Low Density Residential (R-1-6)	Low Density Residential (LDR)
West	London Plaza (across G St.)	Planned Development (P-D) #2	Neighborhood Commercial (CN)

BACKGROUND

City records do not indicate when the gas station and convenience market were originally developed. The use of the food truck is allowed with a conditional use permit; however, the gas

station is considered “legal non-conforming” in the Office Commercial (C-O) Zone in that gas stations are not allowed in the C-O Zone, but this gas station predates the ordinance. Business license records show that at least four businesses have occupied this site since 1997.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed Project complies with the General Plan designation of Office Commercial (CO) and the zoning designation of Office Commercial (C-O) with approval of this Conditional Use Permit.

Traffic/Circulation

- B) The applicant is proposing to locate the food truck within the northeast portion of the parking lot (Attachment B). The food truck would be located about 40 feet from the nearest driveway on the northern portion of the parcel. The food truck would be oriented parallel to the adjacent parking stalls (Condition #18), in a manner that does not block any driving aisles, and provides space for customers to gather around the food truck without backing into the adjacent driving aisle. Orienting the food truck in this manner allows vehicles to enter and exit the subject site without impediments. In addition, the applicant shall be required to preserve access for the Refuse Department so that their trucks can access this site and serve this property (Condition #22).

Parking

- C) The subject site must meet the minimum parking requirements for the existing gas station and the proposed food truck. The parking requirement for a gas station is three spaces, plus one space per 250 square feet of retail sales area. Based on this parking formula, the existing convenience market, which has 750 square feet of sales floor area, would be required to have a minimum of 6 parking spaces. A mobile food vendor is required to have a minimum of 2 parking stalls. Together, both uses would require a minimum of 8 parking stalls. The subject site would exceed this requirement with a total of 9 parking stalls throughout the site. Designated food truck parking stalls would be located adjacent to the west of the food truck.

Public Improvements/City Services

- D) The subject site is fully developed and most public improvements are existing. The food truck is self-contained and would not require a separate connection to the City’s sewer and/or water systems.

Site Design

- E) The subject site is located at the northeast corner of G Street and E. Alexander Avenue. The subject site is a developed 0.37-acre parcel with a 750-square-foot gas station/convenience market on the northeast portion of the parcel, and a 1,250-square-foot fuel pump canopy on the western portion of the parcel. Vehicle access is available from two driveways along G Street, and one driveway along E. Alexander Avenue. Customer

parking is available along the eastern portion of the parcel and would be added along both the northern and southern portions of the parcel. As shown at Attachment B, the food truck (and customer parking stalls) would be located near the northern portion of the parcel, away from the fuel pump canopy and convenience market's main entrance, in a manner that does not create congestion between customers going to the site for the convenience market or driving to pump gasoline. The food truck would be located approximately 40 feet from the nearest fuel pump, and 75 feet from the nearest underground fuel storage tank (meeting the Fire Department's minimum distance requirements from fuel pumps, see Condition #26). The property owner is not proposing to make any interior or exterior modifications to the convenience market or to the gas pump canopy. Outdoor seating is prohibited (e.g. tables, umbrellas, chairs, etc.) as shown under Condition #8, unless subsequently approved by the Planning Department. "No Loitering" signs shall be posted on the food truck and convenience market at specific locations approved by the City Police Department (Condition #25).

Neighborhood Impact/Interface

- F) The subject site is surrounded by a variety of commercial and residential uses. Surrounding uses to the north, south, east, and west, include Farmers Insurance, G Street Auto Care, a single-family home, and the London Commercial Plaza respectively. There is a block wall between the subject site and the single-family home to the east that helps reduce concerns regarding noise and lighting. G Street is a major arterial road that exhibits high volumes of traffic and connects with several commercial strip malls and shopping centers. Given the existing traffic volumes and dense variety of commercial uses throughout the neighborhood, staff does not anticipate that this proposal would significantly change the character of the neighborhood.

Signage

- G) The food truck is not allowed any signs other than what is provided on the vehicle itself. Condition #10 prohibits the use of any A-frame signs, inflatable signs, feather signs, pennants, or other freestanding signs. Any illegal signs and advertisements posted on the adjacent convenience market shall be removed prior to the food truck obtaining a business license (Condition #27).

Truck Details/Operation

- H) The food truck is standard in appearance and size. It is approximately 8 feet wide by 23 feet long, and approximately 7 ½ feet tall (Attachment C). The food truck will operate daily between 7:00 a.m. to 9:00 p.m. The food truck will sell traditional Mexican food including, but not limited to, tacos, tortas, and burritos. Trash receptacles will be provided to collect the plates, forks, aluminum foil, and paper bags that are typically used to serve these meals (Condition #9). The sale of alcohol is prohibited (Condition #24). Employee restrooms will be available inside the market as allowed by the Health Department and agreed upon by the property owner (Condition #23). Disposal of waste products shall be limited to a Merced County Environmental Health Department approved commissary or alternative approved facility (Condition #13). The applicant shall comply with the Water

Quality Control Division's (WQCD) Best Management Practices regarding the disposal of cooking grease and proper cleaning of kitchen equipment, as shown at Attachment D, or as otherwise required by the WQCD (Condition #14).

Mandatory Conditional Use Permit Findings

- I) A Conditional Use Permit is required to allow mobile food vendors within an Office Commercial Zone per Merced Municipal Code (MMC) Table 20.10-1 Permitted Land Uses in the Commercial Zoning Districts. In order for the Planning Commission to approve or deny a conditional use permit, they must consider the following criteria and make findings to support or deny each criteria per MMC 20.68.020 (E) "Findings for Approval for Conditional Use Permits" (Attachment F).

MMC 20.68.020 (E) Findings for Approval.

- 1. The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

The proposed project complies with the General Plan designation of Office Commercial (CO) and the zoning designation of Office Commercial (C-O) with approval of this Conditional Use Permit.

- 2. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

The mobile food vendor shall be required to comply with all relevant standards and requirements from MMC Section 20.44.020 – Food Trucks in Fixed Location, to provide compatibility with surrounding sites. Said standards and requirements are in regard to hours of operation, parking, access, maintenance, advertising, and licenses required.

- 3. The proposed use will not be detrimental to the public health, safety, and welfare of the City.*

To ensure the proposal is not detrimental to the public health, safety, and welfare of the City, the applicant shall subsequently apply for permit approval from the Merced County Environmental Health Department, as required for establishments selling hot meals. The Environmental Health Department would inspect food truck cooking facilities before the business could sell food to the general public.

- 4. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.*

The proposed mobile food vendor is located within the City and can be adequately accessed through existing roads. The food truck would be self-contained with its own

water and power, and would not need to hook-up to City utilities. The food truck would be serviced at an appropriate commissary facility.

Environmental Clearance

- J) Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment E).

Attachments:

- A) Location Map
- B) Site Plan
- C) Photographs of the Food Truck
- D) Water Quality Control Division Best Management Practices Brochure
- E) Categorical Exemption
- F) Excerpt from Merced Zoning Ordinance 20.68.020
- G) Draft Planning Commission Resolution



ATTACHMENT A



fsb

Daniel Cortez

ATTACHMENT B



ATTACHMENT C

MERCED MUNICIPAL CODE

15.50.050 - Discharge of non-storm water prohibited


A. Except as provided in Section 15.50.060, it is unlawful, and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this Code, for any person to make or cause to be made any non-storm water discharge.

B. Notwithstanding the exemptions provided by Section 15.50.060, if the regional water quality control board or the enforcement official determines that any otherwise exempt discharge causes or significantly contributes to violations of any storm water permit, or conveys significant quantities of pollutants to a surface water or storm water conveyance, or is a danger to public health or safety, such discharge shall be prohibited from entering the storm water conveyance system.

1.12.020 - General penalties

A. Misdemeanors. Unless otherwise provided, any person convicted of a misdemeanor under the provisions of this code shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail of Merced County for a period not exceeding one (1) year, or by both such fine and imprisonment.

**REPORT
ILLEGAL DUMPING
(209) 385-6905**

City of 
Merced
Gateway to Yosemite



For further information, please contact our office at:

City of Merced
Water Quality Control Division
1776 Grogan Avenue
Merced, CA 95341
(209) 385-6204
www.cityofmerced.org

**FOOD TRUCKS
AND
STORM WATER**



ATTACHMENT D

The City of Merced is promoting storm water pollution prevention through public outreach and the Storm Water Ordinance. The Merced Municipal Code 15.50.020 - Purpose and Intent states,

A. The purpose of this chapter is to protect and promote the health, safety, and general welfare of the citizens of City of Merced by controlling non-storm water discharges to the storm water conveyance system from spills, dumping, or disposal of materials other than storm water, and by reducing pollutants in urban storm water discharges to the maximum extent practicable.

B. This chapter is intended to assist in the protection and enhancement of the water quality of watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. Sections 1251 et seq.) and any subsequent amendments thereto, by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges into the storm drain system.



Anything that spills or lands on the ground of areas such as streets, sidewalks, drainage channels, or parking lots of the City of Merced eventually becomes storm water pollution. Everything that flows into a storm drain, goes directly to our creeks and rivers, untreated. This means aquatic life can die off and areas for water recreation become unsafe for human enjoyment.

Mobile Food Trucks play a major role in minimizing storm water pollution, because of the mobile aspect of the business. The following are important responsibilities of Food Trucks to aid in the protection of our environment, as well as, the health, safety and general welfare of the citizens of Merced:

DO'S

Visit commissary DAILY for disposing of fats, oils and grease - keep logs



Clean spills using dry methods, like absorbents



Clean kitchen equipment indoors or at wash facility with an oil separator or a grease interceptor



Clean mobile food truck at an approved wash facility



DON'TS

Do not dispose of waste fats, oils and grease in storm drains or drainage ditches



Do not use water to clean up spills



Do not clean kitchen equipment outdoors where wastewater could impact the storm drain



Do not clean mobile food truck at place of residence



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: CUP #1236 (Environmental Review #19-31)

Project Applicant: Daniel Cortez

Project Location (Specific): 3006 G Street APN: 007-091-021

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project:

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Daniel Cortez

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: 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/exterior alterations, such as operating a food truck within a developed commercial site, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a).

Lead Agency: City of Merced
Contact Person: Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

Signature:  **Date:** 11-12-2019 **Title:** 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

20.68.020 - Conditional use and minor use permits.

- A. Purpose. A conditional use or minor use permit is required for uses that are generally appropriate within a zoning district but potentially unsuitable in a particular location or in large numbers. A conditional use or minor use permit is a discretionary action that enables the city to ensure that a proposed use is consistent with all general plan goals and policies and will not create negative impacts to adjacent properties or the general public.
- B. Application Submittal and Review. Application for a conditional use or minor use permit shall be filed and reviewed in compliance with Chapter 20.66 (Permit Application and Review).
- C. Review Authority.
 - 1. Conditional Use Permits. The planning commission shall take action on all conditional use permit applications.
 - 2. Minor Use Permits.
 - a. The director of development services shall take action on all minor use permit applications.
 - b. The director of development services may refer any minor use permit application to the planning commission for review and final decision.
- D. Public Notice and Hearing.
 - 1. Public notice and hearing for a conditional use permit shall be provided in compliance with Chapter 20.70 (Public Notice and Hearing).
 - 2. No public notice or hearing is required for a minor use permit although all records relating to the permit shall be public records and shall be available for review upon request.
- E. Findings for Approval. The review authority may approve an application for a conditional use or minor use permit application only if all of the following findings can be made:
 - 1. The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.
 - 2. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.
 - 3. The proposed use will not be detrimental to the public health, safety, and welfare of the city.
 - 4. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.
- F. Conditions of Approval. The review authority may attach conditions to the approval of a conditional use or minor use permit as needed to ensure compliance with the general plan, zoning ordinance, Merced Municipal Code, city design standards, or any applicable specific

plan, community plan, or area plan, policy, or ordinance adopted by the city.

- G. Appeals. Decisions on conditional use and minor use permits may be appealed as provided for in Chapter 20.74 (Appeals).
- H. Post-Decision Procedures. Procedures and requirements relating to effective dates, time limits, changes to approved projects, resubmittals, and permit revocation shall apply to conditional and minor use permits as provided in Chapter 20.72 (Post-Decision Procedures).
- I. Time Limits. If not exercised within five (5) years of approval, the conditional use permit shall expire. Time extensions of up to two (2) years may be approved by the director of development services. (Refer to Section 20.72.060(B) and (C) for definition of "exercised" and time extension procedures.)

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

CITY OF MERCED
Planning Commission

Resolution #_____

WHEREAS, the Merced City Planning Commission at its regular meeting of December 4, 2019, held a public hearing and considered **Conditional Use Permit #1236**, initiated by Daniel Cortez on behalf of Seven Eleven, Inc., property owners. This application involves a request to operate a food truck within the Valero parking lot, generally located on the northeast corner of G Street and E. Alexander Avenue (3006 G Street), within a Office Commercial (C-O) Zone; said property being more particularly described as the westerly 112.8 feet of Lot 8 as shown on the Map entitled “City of Acres Tract,” recorded in Book 8, Page 41, of Merced County Records; also known as Assessor’s Parcel Number 007-091-021; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J of Staff Report #19-30 (Exhibit B); and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Conditional Use Permits in Merced Municipal Code Section 20.68.020 (E) and other Considerations as outlined in Exhibit B; 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 #19-31, and approve Conditional Use Permit #1236, 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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December 4, 2019

Adopted this 4th day of December 2019

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution # _____
Conditional Use Permit #1236

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (photos) - Attachments B and C of Staff Report #19-30, 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 superseded 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. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. 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.

6. 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.
7. The applicant shall comply with all City of Merced business licensing requirements and with all requirements of the Merced County Environmental Health Department.
8. No outdoor tables or chairs shall be permitted on the premises, unless otherwise approved by the Planning Department in consideration of all relevant parking and vehicle circulation areas on this site.
9. At least two tamperproof trash receptacles shall be provided while food is being served. The site and the immediate surrounding area shall be maintained free of all debris and trash generated from this use.
10. All signing shall be contained on the food truck. No A-frame signs, banners, inflatable signs, feather signs, pennant signs, flags, or other moving or portable signs shall be permitted for this use anywhere on or off the site.
11. The hours of operation shall be any span of time between 7:00 a.m. and 9:00 p.m. and the business may be open 7 days a week. However, if the business is open after dark, lights shall be provided on the vehicle or on the property that are sufficient to light the vehicle and at least a 50-foot radius around the vehicle. If lights are not provided, the food truck shall close at sundown.
12. If the business owners wish to extend the business hours in the future, they must obtain approval from the Development Services Director and the Police Chief, or if deemed necessary by the Development Services Director, be referred back to the Planning Commission for action.
13. Disposal of waste products shall be limited to a Merced County Environmental Health Department approved commissary or alternative approved facility.
14. The applicant shall comply with the Water Quality Control Division's (WQCD) Best Management Practices regarding the disposal of cooking grease and proper cleaning of kitchen equipment, as shown on Attachment D, or as otherwise required by the WQCD.

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION # _____

15. If problems arise as a result of this business that may require excessive Police Department service calls to the site or within the immediate area including, but not limited to, excessive harassment, malicious property damage, lewd and/or disorderly conduct, this approval may be subject to review and revocation by the City of Merced.
16. During hours of operation, food truck employees shall have access to a cell phone (either their own or one provided by the business owner) in case of emergencies.
17. In the future, if there are excessive calls for police assistance, the Police Chief may require the applicant to install exterior video surveillance cameras. 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.
18. The food truck shall be oriented perpendicular to the parking stalls to allow room for customers to gather without being in danger of collisions from vehicles entering/exiting the site. The food truck shall not block the driving aisle or access to the alley.
19. It shall be the operator's responsibility to ensure all customers park in an orderly fashion and don't block the driveway entrances or interfere with other customers visiting the site.
20. The applicant shall comply with all regulations found in Merced Municipal Code Section 20.44.020 - Food Trucks in Fixed Locations, except as modified by these conditions.
21. A minimum of 2 parking spaces on the site shall be dedicated to food truck customers. These spaces shall be located as close as possible to the food truck.
22. Food truck activities shall in no way interfere with the operation of existing businesses on the lot, or nearby businesses, including noise, litter, loitering, and traffic circulation, refuse service, and public safety.
23. The owner shall ensure that restroom facilities are available for the employees. These restrooms shall be provided in a permanent building

that meets the Health Department's requirements for distance from the business operation. Portable toilets shall not be allowed.

24. The mobile food vendor is prohibited from selling alcohol.
25. "No Loitering" signs shall be posted on the food truck and convenience market at specific locations approved by the City Police Department.
26. The food truck shall maintain a minimum distance of 20 feet from all fuel pumps, or as otherwise required by Fire Department.
27. Any illegal signs and advertisements posted on the convenience market onsite shall be removed prior to the food truck obtaining a business license.

Findings and Considerations
Planning Commission Resolution # _____
Conditional Use Permit #1236

General Plan Compliance and Policies Related to This Application

- A) The proposed Project complies with the General Plan designation of Office Commercial (CO) and the zoning designation of Office Commercial (C-O) with approval of this Conditional Use Permit.

Traffic/Circulation

- B) The applicant is proposing to locate the food truck within the northeast portion of the parking lot (Attachment B of Planning Commission Staff Report #19-30). The food truck would be located about 40 feet from the nearest driveway on the northern portion of the parcel. The food truck would be oriented parallel to the adjacent parking stalls (Condition #18), in a manner that does not block any driving aisles, and provides space for customers to gather around the food truck without backing into the adjacent driving aisle. Orienting the food truck in this manner allows vehicles to enter and exit the subject site without impediments. In addition, the applicant shall be required to preserve access for the Refuse Department so that their trucks can access this site and serve this property (Condition #22).

Parking

- C) The subject site must meet the minimum parking requirements for the existing gas station and the proposed food truck. The parking requirement for a gas station is three spaces, plus one space per 250 square feet of retail sales area. Based on this parking formula, the existing convenience market, which has 750 square feet of sales floor area, would be required to have a minimum of 6 parking spaces. A mobile food vendor is required to have a minimum of 2 parking stalls. Together, both uses would require a minimum of 8 parking stalls. The subject site would exceed this requirement with a total of 9 parking stalls throughout the site. Designated food truck parking stalls would be located adjacent to the west of the food truck.

Public Improvements/City Services

- D) The subject site is fully developed and most public improvements are existing. The food truck is self-contained and would not require a separate connection to the City's sewer and/or water systems.

Site Design

- E) The subject site is located at the northeast corner of G Street and E. Alexander Avenue. The subject site is a developed 0.37-acre parcel with a 750-square-foot gas station/convenience market on the northeast portion of the parcel, and a 1,250-square-foot fuel pump canopy on the western portion of the parcel. Vehicle access is available from two driveways along G Street, and one driveway along E. Alexander Avenue. Customer parking is available along the eastern portion of the parcel and

would be added along both the northern and southern portions of the parcel. As shown at Attachment B of Planning Commission Staff Report #19-30, the food truck (and customer parking stalls) would be located near the northern portion of the parcel, away from the fuel pump canopy and convenience market's main entrance, in a manner that does not create congestion between customers going to the site for the convenience market or driving to pump gasoline. The food truck would be located approximately 40 feet from the nearest fuel pump, and 75 feet from the nearest underground fuel storage tank (meeting the Fire Department's minimum distance requirements from fuel pumps, see Condition #26). The property owner is not proposing to make any interior or exterior modifications to the convenience market or to the gas pump canopy. Outdoor seating is prohibited (e.g. tables, umbrellas, chairs, etc.) as shown under Condition #8, unless subsequently approved by the Planning Department. "No Loitering" signs shall be posted on the food truck and convenience market at specific locations approved by the City Police Department (Condition #25).

Neighborhood Impact/Interface

- F) The subject site is surrounded by a variety of commercial and residential uses. Surrounding uses to the north, south, east, and west, include Farmers Insurance, G Street Auto Care, a single-family home, and the London Commercial Plaza respectively. There is a block wall between the subject site and the single-family home to the east that helps reduce concerns regarding noise and lighting. G Street is a major arterial road that exhibits high volumes of traffic and connects with several commercial strip malls and shopping centers. Given the existing traffic volumes and dense variety of commercial uses throughout the neighborhood, staff does not anticipate that this proposal would significantly change the character of the neighborhood.

Signage

- G) The food truck is not allowed any signs other than what is provided on the vehicle itself. Condition #10 prohibits the use of any A-frame signs, inflatable signs, feather signs, pennants, or other freestanding signs. Any illegal signs and advertisements posted on the adjacent convenience market shall be removed prior to the food truck obtaining a business license (Condition #27).

Truck Details/Operation

- H) The food truck is standard in appearance and size. It is approximately 8 feet wide by 23 feet long, and approximately 7 ½ feet tall (Attachment C of Planning Commission Staff Report #19-30). The food truck will operate daily between 7:00 a.m. to 9:00 p.m. The food truck will sell traditional Mexican food including, but not limited to, tacos, tortas, and burritos. Trash receptacles will be provided to collect the plates, forks, aluminum foil, and paper bags that are typically used to serve these meals (Condition #9). The sale of alcohol is prohibited (Condition #24). Employee restrooms will be available inside the market as allowed by the Health Department and agreed upon by the property owner (Condition #23). Disposal of waste products

shall be limited to a Merced County Environmental Health Department approved commissary or alternative approved facility (Condition #13). The applicant shall comply with the Water Quality Control Division's (WQCD) Best Management Practices regarding the disposal of cooking grease and proper cleaning of kitchen equipment, as shown at Attachment D of Planning Commission Staff Report #19-30, or as otherwise required by the WQCD (Condition #14).

Mandatory Conditional Use Permit Findings

- I) A Conditional Use Permit is required to allow mobile food vendors within an Office Commercial Zone per Merced Municipal Code (MMC) Table 20.10-1 Permitted Land Uses in the Commercial Zoning Districts. In order for the Planning Commission to approve or deny a conditional use permit, they must consider the following criteria and make findings to support or deny each criteria per MMC 20.68.020 (E) "Findings for Approval for Conditional Use Permits" (Attachment F of Planning Commission Staff Report #19-30).

MMC 20.68.020 (E) Findings for Approval.

- 1. *The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

The proposed project complies with the General Plan designation of Office Commercial (CO) and the zoning designation of Office Commercial (C-O) with approval of this Conditional Use Permit.

- 2. *The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

The mobile food vendor shall be required to comply with all relevant standards and requirements from MMC Section 20.44.020 – Food Trucks in Fixed Location, to provide compatibility with surrounding sites. Said standards and requirements are in regard to hours of operation, parking, access, maintenance, advertising, and licenses required.

- 3. *The proposed use will not be detrimental to the public health, safety, and welfare of the City.*

To ensure the proposal is not detrimental to the public health, safety, and welfare of the City, the applicant shall subsequently apply for permit approval from the Merced County Environmental Health Department, as required for establishments selling hot meals. The Environmental Health Department would inspect food truck cooking facilities before the business could sell food to the general public.

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

The proposed mobile food vendor is located within the City and can be adequately accessed through existing roads. The food truck would be self-contained with its own water and power, and would not need to hook-up to City utilities. The food truck would be serviced at an appropriate commissary facility.

Environmental Clearance

- J) Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment E of Planning Commission Staff Report #19-30).