

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3003**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of June 6, 2012, held a public hearing and considered **Conditional Use Permit #1168**, initiated by Firaz Jaber, applicant for Encina Investment Group Mainplace, property owner. This application involves a request to allow a nightclub and bar to locate at 427 and 429 W. Main Street, located approximately 150 feet west of K Street, within a Central Commercial (C-C) Zone; also known as Assessor's Parcel No. 031-143-028; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through I of Staff Report #12-08; and,

**WHEREAS**, 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 #12-11, and approve Conditional Use Permit #1168, subject to the Conditions set forth in Exhibit A attached hereto.

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

AYES: Commissioners Colby, Ward, Amey, Acheson, and Vice Chairperson McCoy

NOES: None

ABSENT: Commissioner Madayag and Chairperson Cervantes

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #3003

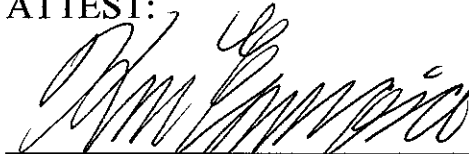
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June 6, 2012

Adopted this 6<sup>th</sup> day of June 2012

  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
Secretary

Attachment:

Exhibit A – Conditions of Approval

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**Conditions of Approval**  
**Planning Commission Resolution #3003**  
**Conditional Use Permit #1168**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) -- Attachment B of Staff Report #12-08, 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in Resolution #1249-Amended ("Standard Conditional Use Permit Conditions"—except for Condition #16 which has been superceded by Code) shall apply.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. Prior to opening the nightclub, the owner shall submit a floor plan with clearly marked dimensions of each area available for dancing to the Inspection Services Department for evaluation of the allowable occupant load. The owner shall comply with all applicable requirements of the Building and Fire Codes for the occupant loads determined from this evaluation.
8. Wall signs shall be as allowed at one square foot of signing for each lineal foot of building frontage. Sandwich board and A-frame-type signs are not allowed. All temporary banners shall be approved by the Planning Department prior to installation and shall comply with Merced Municipal Code Section 17.36.570.
9. This approval shall not become effective until such time as the City Council makes a finding of public convenience or necessity to allow the sale of alcoholic beverages at this location. The effective date of the CUP shall be the date the City Council takes such action. If no such finding is made, the CUP is null and void.
10. The City reserves the right to periodically review the operation for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, lewd and/or disorderly conduct, and disturbing the peace result from the proposed land use, etc., the conditional use permit may be subject to review and revocation by the City of Merced per the procedures in the Merced Municipal Code.
11. In accordance with state law, all alcohol sales shall end at 2:00 a.m.
12. No “adult entertainment” uses as defined in Merced Municipal Code (MMC) Section 20.90 shall be allowed on the premises.
13. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.
14. All nightclub patrons must be at least 21-years old.
15. Noise levels generated by the nightclub/entertainment venue shall be kept to a level not creating a public nuisance to the surrounding business establishments and/or immediate area. If noise-related complaints are

received by the City of Merced, the conditional use permit may be subject to review and possible revocation by the Planning Commission per the procedures in the Merced Municipal Code.

16. To prevent noise from carrying throughout the area, and especially to the nearby residential uses, the doors shall be kept closed except as patrons enter and exit. The doors shall not be propped open during business hours.
17. The applicant shall provide 1 security guard for each entrance/exit, 1 security guard to patrol the outside area, and 1 security guard per each 50 people inside during the nightclub hours. 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.
18. If the nightclub portion of the business and/or business owner changes from the current owner(s), a new application must be brought back to staff with possible referral to the Planning Commission for consideration.
19. The business owner shall be responsible for ensuring the area around the business is kept clean and free of trash, debris, and graffiti.
20. If smoking is permitted outdoors, receptacles shall be available for ashes and cigarette butts and all applicable laws shall be enforced (i.e., distance from doorways, etc.). These receptacles shall not be located within the City right-of-way.

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