

RESOLUTION NO. 2017- 18

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
DENYING AN APPEAL BY JARHETT BLONIEN
ON BEHALF OF TONGTOUA YANG
CONCERNING CONDITIONS #8 AND #17 OF
PLANNING COMMISSION RESOLUTION #3077
APPROVING CONDITIONAL USE PERMIT #1216**

WHEREAS, the Merced City Planning Commission at its regular meeting of February 22, 2017, held a public hearing, and considered Conditional Use Permit #1216 (CUP#1216) to allow an increase in the number of tables allowed within the Merced Poker Room at 1459 Martin Luther King, Jr. Way (refer to map at Exhibit A); and

WHEREAS, the Merced City Planning Commission voted (4 Ayes, 1 No, 1 Absent, 1 Vacancy) to approve CUP #1216 subject to Findings A through I of Staff Report #17-01 – Addendum and subject to Conditions #1 through #36 of Planning Commission Resolution #3077, attached hereto as Exhibit B; and

WHEREAS, Condition #8 of Planning Commission Resolution #3077 limits the number of tables allowed for this card room to 8 tables and reads as follows: “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 card room;” and

WHEREAS, Condition #17 of Planning Commission Resolution #3077 also limits the number of tables allowed for this card room to 8 tables and reads as follows: “The maximum number of tables allowed for this card room is limited to the number allowed under this Conditional Use Permit and is limited to 8 tables;” and

WHEREAS, an appeal was filed regarding the number of tables present in the facility which is currently limited to 8 by Conditions #8 and #17 of Planning Commission Resolution #3077; and

WHEREAS, the Merced City Planning Commission approved CUP #1216 authorizing a total of 8 tables for Merced Poker Room and also approved CUP #1218 authorizing a total of 8 tables for Poker Flats Casino at 1714 Martin Luther

King, Jr. Way, thus allocating the total number of tables allowed within the City of Merced.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. FINDINGS. The City Council finds and declares that:

- A. Based upon the evidence and testimony in the record at the City Council public hearing, the City Council, exercising its independent judgment hereby finds that the Merced Municipal Code Section 9.08.020 – Cardrooms does not define “tables” as operational or non-operational, but specifically limits the number of tables within the City of Merced to 16 card tables.
- B. All available tables have been allocated between the two card rooms operating within the City.
- C. The California Gambling Control Act does not supersede City Ordinances. Therefore, the maximum number of tables allowed in a card room may be set by local ordinance.
- D. Unless the City’s Cardroom Ordinance (MMC 9.08) is amended to clarify the definition of a “card table” and addresses the difference between “operating” card tables and “non-operating” card tables, the appeal cannot be approved because of Finding B above.

SECTION 2. DENIAL OF THE APPEAL. The City Council after hearing all the testimony and evidence pertaining to the appeal, hereby adopts Findings A through C above as independent reasons for denial of the appeal request for CUP #1216 and denies the appeal of Conditions #8 and #17 of Planning Commission Resolution #3077.

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AYES: 7 Council Members: BELLUOMINI, BLAKE, MARTINEZ,
MCLEOD, MURPHY, PEDROZO, SERRATTO

ABSENT: 0 Council Members: NONE

ABSTAIN: 0 Council Members: NONE


Mayor

BY:  _____
Assistant/Deputy City Clerk

 March 15, 2017
City Attorney Date



House of
Furniture/
Smart & Final

SUBJECT
SITE

In 'n Out
Burger

Existing
Merced
Poker Room

CITY OF MERCED
Planning Commission

Resolution #3077

WHEREAS, the Merced City Planning Commission at its regular meeting of February 22, 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 - Addendum; 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 PADILLA, seconded by Commissioner BAKER, and carried by the following vote:

AYES: Commissioners Baker, Colby, Dylina, and Padilla
NOES: Commissioner Smith
ABSENT: Commissioner Smoot
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3077

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February 22, 2017

Adopted this 22nd day of February 2017



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval
Planning Commission Resolution #3077
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 - Addendum, 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. 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.
16. The business owner shall obtain all necessary permits and approvals required by the State of California to hold tournaments at this location. The number of tables used for any tournament shall not exceed the maximum allowed under this Conditional Use Permit. All other uses of temporary tables shall be prohibited.
17. The maximum number of tables allowed for this card room is limited to the number allowed under this Conditional Use Permit and is limited to 8 tables.
18. 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 to obtain all necessary approvals.
19. 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.
20. 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.
21. 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.
22. 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.
23. The card room is approved to operate 24 hours per day.
24. 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.

25. "No Loitering" signs shall be placed on the exterior of the building to deter non-patrons from gathering near the building.
26. Sufficient lighting shall be provided throughout the site to provide a safe environment for patrons of the cardroom.
27. The premises shall remain clean and free of debris at all times.
28. No one under the age of 21 shall be allowed to participate in card playing activities.
29. No owner or employee shall extend credit to card players.
30. 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.
31. 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.
32. 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.
33. 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.

34. 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.
35. 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.
36. 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.

n:shared:planning:PC Resolutions: CUP #1216 Exhibit A