



CITY OF MERCED

Meeting Agenda

City Council Chambers
Merced Civic Center
2nd Floor
678 W. 18th Street
Merced, CA 95340

City Council/Public Finance and Economic Development Authority/Parking Authority

Monday, December 7, 2015

7:00 PM

Council Chambers, 2nd Floor, Merced Civic
Center, 678 W. 18th Street, Merced, CA 95340

Study Session at 5:30 PM/Closed Session to Follow/Regular Meeting at 7:00 PM

NOTICE TO PUBLIC

WELCOME TO THE MEETING OF THE MERCED CITY COUNCIL

At least 72 hours prior to each regular City Council meeting, a complete agenda packet is available for review on the City's website at www.cityofmerced.org or at the City Clerk's Office, 678 W. 18th Street, Merced, CA 95340. All public records relating to an open session item that are distributed to a majority of the Council will be available for public inspection at the City Clerk's Office during regular business hours.

PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE CITY CLERK

Members of the audience who wish to address the City Council are requested to complete a speaker card available at the podium against the right-hand side of the Council Chambers. Please submit the completed card to the City Clerk before the item is called, preferably before the meeting begins.

INDIVIDUALS WITH DISABILITIES

Accommodation for individuals with disabilities may be arranged by contacting the City Clerk at (209) 388-8650. Assisted hearing devices are available for meetings held in the Council Chambers

A. STUDY SESSION ROLL CALL

B. STUDY SESSION

- B.1. [15-324](#) **SUBJECT: Joint Planning Commission/City Council Study Session on the Public Review Draft of the Zoning Ordinance**

REPORT IN BRIEF

The City Council will meet in a joint study session with the Planning Commission to discuss the Public Review Draft of the Updated Merced Zoning Ordinance, released in September 2015.

RECOMMENDATION

No action needed. Questions and discussion only.

C. CLOSED SESSION ROLL CALL

D. CLOSED SESSION

- D.1. [15-359](#) SUBJECT: PUBLIC EMPLOYEE APPOINTMENT - Title: City
Manager; Authority: Government Code Section 54957

E. CALL TO ORDER

E.1. Invocation - Pastor Stephen Eastwood, Olive East 7th Day Adventist Church

E.2. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority, and Public Financing and Economic Development Authority. City Council Members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority, and Public Financing and Economic Development Authority receive no compensation.

F. ROLL CALL

G. REPORT OUT OF CLOSED SESSION

H. CEREMONIAL MATTERS

H.1. Award - Project of the Year for McNamara Park

H.2. Certificates of Recognition for David Soto and Mikel Schlessinger

I. WRITTEN PETITIONS AND COMMUNICATIONS

J. ORAL COMMUNICATIONS

Members of the public who wish to speak on any matter not listed on the agenda may speak during this portion of the meeting and will be allotted 5 minutes. State law prohibits the City Council from acting at this meeting on any matter raised during the public comment period. The Mayor may, at his discretion, decrease the time allotted to speakers in order to accommodate as many speakers as possible. Members of the public who wish to speak on a matter this is listed on the agenda will be called upon to speak during discussion of that item.

K. CONSENT CALENDAR

Adoption of the Consent Calendar may be made by one motion of the City Council, provided that any Councilmember, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the item will be discussed and voted on separately.

- K.1. [15-356](#) **SUBJECT:** Information Only Contracts
- K.2. [15-330](#) **SUBJECT:** Information Only-Planning Commission Minutes of September 9, September 23, and October 21, 2015
- K.3. [15-355](#) **SUBJECT:** Economic Development Advisory Committee Minutes of August 25, 2015.
- K.4. [15-350](#) **SUBJECT:** Information Only - Traffic Committee Minutes of September 8, 2015
- K.5. [15-352](#) **SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of June 15, 2015, July 6, 2015, and July 20, 2015.

REPORT IN BRIEF

Official adoption of previously held meeting minutes.

RECOMMENDATION

City Council/Public Financing and Economic Development/Parking Authority - Adopt a motion approving the meeting minutes of June 15, July 6, and July 20, 2015.

- K.6. [15-353](#) **SUBJECT:** Reading by Title of All Ordinances and Resolutions

REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

RECOMMENDATION

City Council - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

- K.7. [15-349](#) **SUBJECT:** Agreement with Merced Lao Community Inc. for Police Services at the 2015 Hmong New Year Festival

REPORT IN BRIEF

Consider authorizing an agreement for the Merced Police Department to

provide security and crowd control services.

RECOMMENDATION

City Council - Adopt a motion approving an agreement in the amount of \$4,000 with Merced Lao Community to provide security and crowd control services for the annual Hmong New Year Festival held at the Merced County Fairgrounds on December 18th, 19th and 20th 2015; and authorizing the City Manager to execute the necessary documents.

K.8. [15-347](#)

SUBJECT: Cooperative Work Agreement (CWA) Cycle 13 Funds
Subject to Lapsing on June 30, 2016

REPORT IN BRIEF

Considers a submittal to the California Department of Transportation (Caltrans) requesting an extension for preliminary funds subject to lapsing for the Bear Creek Bike Path Project and acknowledging completion of the preliminary phase for the Black Rascal Creek Bike Path.

RECOMMENDATION

City Council - Adopt a motion approving the CWA Cycle 13 Submittal, and authorizing the City Manager to execute the necessary documents.

K.9. [15-187](#)

SUBJECT: Third Amendment with Quad Knopf, Inc., for the
Preparation of Environmental Technical Studies for the Bear Creek
Bike Path Project 111066

REPORT IN BRIEF

Considers approving a \$27,054 amendment with Quad Knopf, Inc., to complete required environmental documents for the future construction of a Class I Bike Path along State Route 59.

RECOMMENDATION

City Council - Adopt a motion approving the Third Amendment to Professional Services Agreement with Quad Knopf, Inc., in the amount of \$27,054 for the Preparation of Environmental Technical Studies; and, authorizing the City Manager to execute the necessary documents.

K.10. [15-286](#)

SUBJECT: First Amendment to the Purchase and Sale Agreement for
2322 G Street

REPORT IN BRIEF

Amend the Purchase and Sale Agreement for 2322 G Street to allow additional time to complete Phase One of the Pro Lube construction

project.

RECOMMENDATION

City Council - Adopt a motion approving the First Amendment to the Purchase and Sale Agreement for 2322 G Street allowing additional time for the project to be completed and authorizing the City Manager to execute the necessary documents.

K.11. [15-306](#)

SUBJECT: Agreement with Merced Zoological Society

REPORT IN BRIEF

Agreement with Merced Zoological Society to contribute at least \$85,000 of the total operating budget for Fiscal Year 2015/2016.

RECOMMENDATION

City Council - Adopt a motion approving the agreement with the Merced Zoological Society for payment of at least \$85,000, (approximately 30%) of the total operating budget at the Zoo and authorizing the City Manager to execute the necessary documents.

K.12. [15-315](#)

SUBJECT: Minimum Wage Increase

REPORT IN BRIEF

Approve minimum wage in accordance with Minimum Wage Order MW-2014 and salaries tied to minimum wage.

RECOMMENDATION

City Council - Adopt **Resolution 2015-46**, a Resolution of the City Council of the City of Merced, California, amending the salary ranges for the temporary classifications of Lifeguard I, Lifeguard II, Pool Manager, Recreation Coordinator, Recreation Leader, and Recreation Specialist; and, authorizing the City Manager to execute the necessary documents.

K.13. [15-317](#)

SUBJECT: Revise Personnel Allocation in Engineering Division of the Development Services Department by Deleting One Engineering Technician III/IV position and Adding One Senior Engineer Position to the Engineering Division of the Development Services Department.

REPORT IN BRIEF

The action requested is to staff the department appropriately for the planned upcoming projects in the City.

RECOMMENDATION

City Council - Adopt **Resolution 2015-44**, A Resolution of the City

Council of the City of Merced, California, Amending the Classification Plan by Amending the Personnel Allocation in the Engineering Division of the Development Services Department by Deleting One Engineering Technician III/IV and Adding One Senior Engineer.

K.14. [15-354](#)

SUBJECT: Allocation of Fiscal Year 2015-16 Community Development Block Grant (CDBG) Funds for a Warming Center with Merced County Rescue Mission

REPORT IN BRIEF

Contract authorization between the City of Merced and Merced County Rescue Mission for the operation of a community Warming Center.

RECOMMENDATION

City Council - Adopt a motion approving the allocation of \$13,000 of Community Development Block Grant funds to assist with the cost of operating a warming center; and authorizing the City Manager to execute the necessary documents.

L. PUBLIC HEARINGS

L.1. [15-260](#)

SUBJECT: Public Hearing - Vacation 15-01 to Abandon a Portion of a Public Utilities Easement Located Along the East Property Line of 2936 Crestwood Court

REPORT IN BRIEF

The City Council will consider the abandonment of approximately 620 square feet of an existing public utilities easement along the eastern property line of the property located at 2936 Crestwood Court.

RECOMMENDATION

City Council - Adopt a motion approving **Resolution 2015-45**, A Resolution of the City Council of the City of Merced, California ordering the vacation of a portion of a public utilities easement located along the east property line of the property located at 2936 Crestwood Court (Vacation #15-01).

L.2. [15-323](#)

SUBJECT: Public Hearing Regarding Proposed Changes to the Massage Establishment Regulations and Specific Zoning Provisions Relating to Massage Uses

REPORT IN BRIEF

Consider amendments to the Chapter 5.44 of the Merced Municipal Code relating to massage establishments and amendments to the

Zoning Ordinance (Title 20) relating to massage uses.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving Environmental Review #14-25 (Categorical exemption);
and,

B. Introducing **Ordinance 2451**, an Ordinance of the City Council of the City of Merced, California Amending Chapter 5.44, "Massage Establishments," of the Merced Municipal Code; and,

C. Introducing **Ordinance 2452**, an Ordinance of the City Council of the City of Merced, California Amending Sections 20.20.020, "Permitted Uses," 20.20.040, "Conditional Uses," 20.22.020, "Permitted Uses," 20.22.050, "Conditional Uses," 20.24.020, "Permitted Uses," 20.24.040, "Conditional Uses," 20.26.040, "Conditional Uses," and 20.28.040, "Conditional Uses," of the Merced Municipal Code Regarding the Zoning of Massage Establishments as Conditional Uses Subject to Specific Conditions.

M. REPORTS

M.1. [15-345](#)

SUBJECT: Approval of Employment Agreement for Position of Interim City Manager and Adoption of Resolution Approving Appointment of John M. Bramble to Interim City Manager Pursuant to California Government Code Sections 21221(h) and 7522.56

REPORT IN BRIEF

Authorization request to fill vacant City Manager position with a California Public Employee's Retirement System (CalPERS) Retired Annuitant.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving the terms of an employment agreement with John M. Bramble to serve as Interim City Manager; and,

B. Authorizing the Mayor to execute an employment agreement with Mr. Bramble after his official retirement date; and,

C. Adopting **Resolution 2015-47**, a Resolution of the City Council of the City of Merced, California, making a determination of special need

for an Interim City Manager pursuant to California Government Code sections 21221(h) and 7522.56.

M.2. [15-360](#)

SUBJECT: Follow up Reports Regarding Downtown Discussion

REPORT IN BRIEF

This follow up session provides reports on the Downtown Discussion requested at the November 16, 2015 City Council Meeting.

RECOMMENDATION

Staff is seeking direction from Council to form a Downtown/Central Merced Ad Hoc Group. Staff would return to Council with recommendations on the Group's composition and purpose.

N. BUSINESS

N.1. [15-361](#)

SUBJECT: Approval of Employment Agreement with New City Manager

REPORT IN BRIEF

Consider approving the employment agreement with the new City Manager.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Employment Agreement and announcing the new City Manager/City Clerk; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

N.2. Request to Add Item to Future Agenda

N.3. City Council Comments

O. ADJOURNMENT



ADMINISTRATIVE REPORT

Agenda Item B.1.

Meeting Date: 12/7/2015

Report Prepared by: *Kim Espinosa, Planning Manager, Development Services Department*

SUBJECT: Joint Planning Commission/City Council Study Session on the Public Review Draft of the Zoning Ordinance

REPORT IN BRIEF

The City Council will meet in a joint study session with the Planning Commission to discuss the Public Review Draft of the Updated Merced Zoning Ordinance, released in September 2015.

RECOMMENDATION

No action needed. Questions and discussion only.

ALTERNATIVES

Not Applicable

AUTHORITY

Title 20 of the Merced Municipal Code is the current Merced Zoning Ordinance.

CITY COUNCIL PRIORITIES

Under the "Future Planning" section, the Zoning Ordinance is listed as a Council priority.

DISCUSSION

Purpose of the Study Session

At the September 8, 2015, City Council meeting and the September 9, 2015, Planning Commission meeting, City staff presented an overview and provided copies of the Public Review Draft of the new Merced Zoning Ordinance. This is the first comprehensive update of the Zoning Ordinance since its adoption in the early 1960's and represents a complete redesign, update, and modernization of the Zoning Ordinance in order to make the Ordinance easier to use and understand for the general public and to provide specific guidance to developers, making the development process simpler and faster. The goal was to facilitate the City's overall growth and development and enhance the community's overall appearance, access to services, and economic health.

Along with the Public Review Draft, the Planning Commission and City Council were provided with a summary of the Focus Group's recommendations, a summary table of the major changes proposed to the existing ordinance in the Draft, and a cover memo with a list of possible review questions. These supplementary materials are also attached to this report, but **please remember to bring your**

copy of the Public Review Draft to the study session. The purpose of tonight's study session is to give the Planning Commission and City Council an opportunity to ask staff questions about the Draft and to discuss any topics of interest regarding the Zoning Ordinance. The Planning Commission and City Council should also provide guidance regarding any additional information they would like staff to present at future study sessions to help the Commission and Council in their review of the Ordinance. The Planning Commission and City Council should also indicate whether there should be more joint study sessions on this topic or whether the two bodies wish to hold their own separate study sessions. Public hearings to consider adoption of the new ordinance are expected in early 2016.

IMPACT ON CITY RESOURCES

No appropriation of funds is necessary.

ATTACHMENTS

1. Cover memo for Public Review Draft of Zoning Ordinance
2. Summary of Major Changes to the Current Zoning Ordinance
3. Zoning Ordinance Focus Group Recommendations
4. Bicycle Advisory Commission Recommendations

City of Merced
MEMORANDUM

DATE: September 8 & 9, 2015
TO: Planning Commission and City Council
FROM: Kim Espinosa, Planning Manager
SUBJECT: Public Review Draft of New Zoning Ordinance

Introduction

City staff is pleased to present the Public Review Draft of the new Merced Zoning Ordinance. This is the first comprehensive update of the Zoning Ordinance since its adoption in the early 1960's and represents a complete redesign, update, and modernization of the Zoning Ordinance in order to make the Ordinance easier to use and understand for the general public and to provide specific guidance to developers, making the development process simpler and faster. The goal was to facilitate the City's overall growth and development and enhance the community's overall appearance, access to services, and economic health.

The process began in 2012 with the hiring of a consultant, The Planning Center (now known as Placeworks), with the use of grant funds. Before the grant funds ran out in December 2013, the consultants prepared a preliminary draft of the new ordinance. Since that time, City Planning Staff took over responsibility for the project and facilitated the Focus Group meetings from July 2013 to March 2015 (see below). City staff also completely reformatted the ordinance with the use of color, enhanced graphics and photographs, and added provisions to address various issues that came up throughout the Focus Group process. In December 2014, City staff produced a Focus Group Review Draft for the Focus Group to review; and in September 2015, City staff produced this Public Review Draft with changes as asked for by the Focus Group along with various changes that arose from City staff's experience with implementing the current Zoning Ordinance.

Focus Group

The Merced Zoning Ordinance Update Focus Group was made up of Merced residents with various interests, including developers, engineers, planners, real estate, banking, and other interested citizens (see below for the members). The Zoning Ordinance Focus Group met a total of 17 times from July 2013 to March 2015. Over the course of the meetings, the Focus Group made recommendations on the draft Zoning Ordinance. Please see the enclosed document entitled "Zoning Ordinance Update Focus Group Recommendations" for a summary of the recommendations from the Focus Group.

Focus Group Members: Jim Abbate, Christina Alley, Ann Andersen, Todd Bender, Kenra Bragonier, Adam Cox, Tony Dossetti (Council Member), Ron Ewing, Loren Gonella, Forrest Hansen, Flip Hassett, Jack Lesch, Elmer Lorenzi, Des Johnston, Guy Maxwell, Carole McCoy (former Planning Commissioner), Michelle Paloutzian, Garth Pecchinino, Joe Ramirez, Mike Salvadori, Stan Thurston (Mayor), Brandon Williams (former Planning Commissioner), Jim Xu, and Chairman Bruce Logue

Tips for Reviewing the Draft

In order to make reviewing the Draft a bit easier, this is an “annotated” version of the Public Review Draft. This means that Staff has noted throughout the DRAFT whether a section is either:

- “[**NEW**],” meaning this section is completely new and is NOT in the current Zoning Ordinance; or,
- **“No Changes from the Current Ordinance [with a reference to the appropriate Merced Municipal Code (MMC) section].”** meaning that the section is in the current Zoning Ordinance and that the text has NOT been changed. However, since the Zoning Ordinance has been completely reorganized, the section has likely been moved to a new location with a new reference number. Therefore, a reference to where it can be found in the current ordinance is given; or,
- **“Modified from the Current Ordinance (with a brief summary of the changes),”** meaning that this section has been modified from the current Ordinance and then gives a brief summary of the changes and a reference to the current MMC section.

Please use the following link to find the current Zoning Ordinance (Title 20 of the Merced Municipal Code) on the City’s website if you wish to compare the existing text yourself.

https://www.municode.com/library/ca/merced/codes/code_of_ordinances

Also to assist in your review, City staff had enclosed a separate document entitled “Zoning Code Update—Summary of Major Changes” which summarizes the major changes in the Zoning Code in a table format.

QUESTIONS TO THINK ABOUT WHEN REVIEWING THE PUBLIC REVIEW DRAFT OF ZONING ORDINANCE

The Zoning Ordinance Focus Group asked City staff to prepare questions to assist the Focus Group in their review of the Draft Zoning Ordinance and to help focus their discussion on various issues. The Focus Group found this approach to be very helpful, so the questions have been provided below (with a few additions and modifications to reflect the changes made by the Focus Group) to assist in your review of the Draft Ordinance. (Please note that the list below is a combined list of the Focus Group questions from 2 sets of questions that were prepared, so the question numbers may not correspond to the question numbers in the Focus Group Recommendations memo.)

Overall Organization/Table of Contents

- 1) Although much of the content in the Public Review Draft is based on the City’s current Zoning Ordinance, the new Ordinance is organized much differently. Do you like the way the Draft is organized? Is it easy to understand and readable? Is it easy to find provisions that apply to specific land uses? Do the land use tables make it easier to see which land uses are allowed in each zone? Are the tables that spell out development standards easy to understand? Are the illustrations clear and understandable?

Part 1—Enactment and Applicability

- 2) Part 1 is made up of three chapters, 20.02—Purpose, 20.04—Interpretation, and 20.06—Zoning Districts and Maps. These chapters serve as an introduction to the Zoning Ordinance and provide explanations of how the ordinance should be interpreted. Are these provisions clear or do they need further clarification?

Part 2—Zoning District Standards

One of the most important aspects of the new Zoning Ordinance are the Land Use Regulation Tables in each of the chapters in Part 2. Many of the questions in this section focus on these Tables. When reviewing the Land Use Regulation Tables, think about each land use and whether it is appropriate for that zone (keeping in mind the purpose of each zone as described at the beginning of each chapter). You may also want to compare the proposed Table with the existing regulations which are summarized in tables at the end of each chapter. Also think about whether the level of City review required is appropriate, keeping in mind the following:

- a) **P = Permitted Use.** This means that the use is allowed with non-discretionary City review, either a Building Permit or a Business License. The City must allow the use to locate in that zone. The City's Interface regulations (Chapter 20.32) could be applied to require conditions to make them compatible with adjacent lower intensity uses but the land use itself cannot be denied.
- b) **M = Minor Use Permit Required.** This is a new permit defined in Section 20.68.020. Minor Use Permits would be approved or denied by the Director of Development Services or the Director could refer the permit to the Planning Commission for a decision. No public hearings are required so the neighbors would not be notified of the proposed use. This review process would generally not take more than 1-2 weeks, but would likely be much shorter.
- c) **SP = Site Plan Review Permit Required.** Site Plan Review Permits (Section 20.68.050) are reviewed by the Site Plan Review Committee (made up of the Director of Development Services, Chief Building Official, and City Engineer or their designees), unless referred to the Planning Commission by the Committee. Public hearings would not be required of Industrial uses (no change from the current ordinance); but public hearings would be required for properties directly adjacent to residentially zoned property or Interface reviews (Chapter 20.32) with a 10-day notice to adjacent properties. This review process should take no more than 3-6 weeks, less if no hearings are required.
- d) **C = Conditional Use Permit Required.** Conditional Use Permits are reviewed by the Planning Commission, which may approve the use with conditions to ensure compatibility with surrounding uses or deny the use as inappropriate for the proposed location. This is a discretionary review which requires environmental review and public hearings with 21-day notification required. This review process generally takes 6-8 weeks, but could be longer. Actions of the Planning Commission can be appealed to the City Council.
- e) **X = Use Not Allowed.** The City cannot allow the proposed use in that particular zone.

Chapter 20.08—Residential Zoning Districts

- 3) Please review carefully Table 20.08-1 on page 12 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.08.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above. (You may also want to compare the proposed Table with the existing regulations in Table A1 on page 20A.)
- 4) The Rural Residential (R-R) District is a new district which corresponds to a General Plan land use designation. Do the regulations for the R-R district in Section 20.08.050 on page 20 seem appropriate?

Chapter 20.10—Commercial Zoning Districts

- 5) Please review carefully Table 20.10-11 on page 22 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.10.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above. (You may also want to compare the proposed Table with the existing regulations in Table B1 on page 32A.)
- 6) In the current Zoning Ordinance, there are height restrictions applied in all zoning districts. In Table 20.10-2 on page 28 for all commercial zones (and also for industrial, Downtown, and other non-residential zones in later chapters), it is proposed that the height limits only apply to structures that are directly adjacent to residential zones and to allow exceptions to the height limits in those cases to be granted by the Site Plan Review Committee. This is designed to give flexibility to non-residential structures while still maintaining protections for residential areas. Do you agree with this change?
- 7) The Ordinance proposes design guidelines for the new Business Park zoning district in Section 20.10.030(E) on page 30. City staff is proposing to also apply those same B-P guidelines to regional centers outside the Downtown area in the C-C zone to allow the C-C zone to function more like the corresponding “Regional/ Community Commercial” (RC) General Plan designation, instead of focusing mostly on Downtown. Are these changes appropriate?

Chapter 20.12—Industrial Zoning Districts

- 8) Please review carefully Table 20.12-11 on page 33 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.12.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above. (You may also want to compare the proposed Table with the existing regulations in Table C1 on page 40A.)

Chapter 20.14—Downtown Zoning Districts

- 9) Do you think the creation of these 3 new Downtown zoning districts to better reflect the unique characteristics of different Downtown commercial areas is worthwhile or should the City continue to just use the current C-C zone?
- 10) Please review carefully Table 20.14-11 on page 42 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.14.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above.
- 11) Are the new development standards in Section 20.14.030 starting on page 45 appropriate or too restrictive?

Chapter 20.16—Urban Village Zoning Districts

- 12) These 3 new Urban Village zoning districts have been created to correspond to the Urban Village designations in the City's General Plan and would offer additional zoning options for developers to choose (if they wish) instead of Planned Developments in newly annexed areas. Are these new zoning districts necessary?
- 13) Please review carefully Table 20.16-11 starting on page 53 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.16.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above.
- 14) Are the new development standards in Section 20.16.030 starting on page 55 appropriate or too restrictive?

Chapter 20.18—Public Use and Agricultural Zoning Districts

- 15) This chapter contains 2 new zoning districts, Parks and Open Space (P-OS) and Public Facility (P-F), along with the existing Public Parking (P-PK) zone and a modified Agricultural (A-G) zone which replaces the current A-T-5 and A-1-20. Are these new P-OS and P-F zones worthwhile additions or will they have limited use due to the small number of uses allowed in each?
- 16) Please review carefully Table 20.18-11 on page 60 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.18.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above.

Chapter 20.20—Special Use Zoning Districts

- 17) The "Summary of Major Changes" notes several changes to the Planned Development requirements, starting on page 66, to make it more flexible and easier for developers to use. Are these changes appropriate?

Chapter 20.22—Overlay Zones

- 18) What do you think of the new Urban Residential (/UR) overlay zone, starting on page 74? Will it encourage the use of different housing types not typically found in Merced?

Part 3—General Regulations

Chapter 20.30—Walls and Fences

- 19) Section 20.30.020(A)(2) on page 98 would allow the addition of 1 foot of lattice on residential fences and Note 2 of Table 20.30-1 on page 98 would allow the maximum height of backyard residential fences to be increased from 6 feet to 7 feet. Are these changes appropriate?
- 20) Section 20.30.030 on Corner Vision Triangles on page 103 defines the areas where fence heights are limited in order to ensure visibility at intersections. The DRAFT proposes to change the requirement from 10 feet to 15 feet for driveways and alleys and to change the current requirement from 40 feet for all intersections to 25 feet, 40 feet, or 55 feet depending on the type of street. Are these changes appropriate?
- 21) The City's current Ordinance does not address some common wall materials. Section 20.30.040 on page 104 allows barbed wire fences in residential zones, razor wire fences in all zones, and electric fences in only non-residential zones, all with a Minor Use Permit. Are these provisions appropriate?

Chapter 20.32—Interface Regulations

- 22) Section 20.32 (Interface Regulations), starting on page 105, would stay mostly the same from the current ordinance, but would change the requirement from a Conditional Use Permit before the Planning Commission to a Site Plan Review Permit before the Site Plan Review Committee (a staff level committee). Are these changes appropriate?

Chapter 20.34—Creek Buffers

- 23) There aren't any provisions in the current ordinance regarding these buffer areas along creeks, although they are required in the General Plan. Are these new requirements appropriate?

Chapter 20.36—Landscaping

- 24) This is an entirely NEW chapter, but is based on existing City requirements (outside of the zoning ordinance) and new provisions in State Law to address drought conditions. Are these new requirements appropriate?

Chapter 20.38—Parking and Loading

- 25) Table 20.38-1 (starting on page 120) proposes quite a few changes to the City's current parking requirements for various land uses. A comparison to the current ordinance can be found in Table D1 starting on page 140A. Are these changes appropriate?

- 26) Section 20.38.080 (starting on page 135) includes NEW requirements for bicycle parking based on recommendations from the Bicycle Advisory Commission (BAC) and the Zoning Ordinance Focus Group. Unfortunately, the two groups did not agree on what should be required with the Focus Group wanting to only have requirements to match the State’s new building “Green” code requirements and the BAC looking for more stringent requirements in order to encourage more bicycle use in the community. (Refer to the annotations in each section to see how the two recommendations differed.) Looking at the proposed requirements, are they too restrictive or appropriate for a community that is trying to become more “bicycle friendly”?

Chapter 20.40—Small Lot Single Family Homes

- 27) This is a NEW chapter based on the Small Lot Design Guidelines adopted by the City in 2008. Currently, such small lot designs can only occur in Residential Planned Developments. This chapter would also allow them to be approved with a CUP in the R-2, R-IV, and R-OV zones. Are these changes appropriate? Are there other zones where this should be considered?

Chapter 20.44—Special Land Use Regulations

- 28) Chapter 20.44 (starting on page 149) proposes special regulations for several new land uses not addressed in the current ordinance. Are these new regulations appropriate for the following uses:
- a) Section 20.44.020—Food Trucks in Fixed Locations (starting on page 150)? Keep in mind that food trucks have become increasingly popular and are increasingly competing with “bricks and mortar” restaurants. Also, with internet advertising allowing such trucks to locate in multiple locations over the course of a week, the need for clear regulations on where these trucks can locate and what review process is to be followed is critical.
 - b) Section 20.44.040—Check Cashing Establishments (starting on page 152)?
 - c) Section 20.44.050—Community Gardens (starting on page 152)?
 - d) Section 20.44.060—Fraternities and Sororities (starting on page 153)?
 - e) Section 20.44.080—Live/Work Units (starting on page 155)?
 - f) Section 20.44.090—Recycling Facilities (starting on page 157)?
 - g) Section 20.44.100—Outdoor Displays of Merchandise (starting on page 159)?
 - h) Section 20.44.110—Photovoltaic Energy Systems (starting on page 160)?
 - i) Section 20.44.120—Single Room Occupancy (starting on page 161)?
 - j) Section 20.44.140—Wrecking Establishments (starting on page 162)?
 - k) Section 20.44.150—Emergency Shelters (starting on page 163)? Recent changes in State law require the City to not only allow emergency shelters as a permitted use in at least one zone but to set forth development standards for such uses as well.

- l) Section 20.44.160—Tobacco Sales Prohibited near Schools (starting on page 164)? In January 2015, the County Department of Environmental Health requested that the Focus Group include provisions that prohibited the sale of tobacco products within 1,000 feet of schools and other youth-oriented facilities. The Focus Group recommended that these provisions be included in the Public Review Draft for Council consideration. Are these new regulations appropriate?

Chapter 20.48—Home Occupations

- 29) Chapter 20.48 (beginning on page 171) proposes to establish two levels of home occupations (i.e. home-based businesses) and establishes levels of review and standards for each. (This is based on suggestions from the Focus Group and City staff’s experience with home occupations that sometimes cause concerns in neighborhoods.) Are these new provisions appropriate?

Chapter 20.58—Wireless Communications Facilities

- 30) Table 20.58-2 (starting on page 207) makes several changes to the existing ordinance in order to encourage more “stealth” facilities (those that look like trees or flagpoles instead of antenna towers), including allowing greater heights for stealth facilities and changing the review process to staff level reviews for most facilities. Are these changes appropriate?

Part 4—Permits and Administration

NOTE: Although Part 4 is more extensive than the City’s current ordinance on the different types of permits required for development (i.e. general plan amendments, zone changes, conditional use permits, etc.), for the most part, the DRAFT ordinance is either consistent with current City practices or with the requirements of State Law. Therefore, the following questions relate to only a few sections in Part 4.

- 31) Table 20.64-1 on page 228 summarizes the role of each of 4 bodies (the Director of Development Services, the Site Plan Review Committee, the Planning Commission, and City Council) in the development process for the various types of actions. Please review this table and indicate if you would recommend any changes in those roles.
- 32) Section 20.68.020 (starting on page 235) outlines the process for a new type of permit—the Minor Use Permit. Is this new type of permit necessary and do the proposed procedures seem appropriate?
- 33) Section 20.68.040 (starting on page 241) outlines the process for a new type of permit—Minor Modifications. Is this new type of permit necessary and do the proposed procedures seem appropriate?
- 34) Section 20.68.050 (starting on page 242) outlines the process for Site Plan Reviews, which is an existing process that applies only in industrial areas, but now will be

expanded for use in many more situations in the proposed DRAFT. Are these changes appropriate?

- 35) Section 20.68.040 (starting on page 244) outlines the process for a new type of permit—Special Project Permits. Is this new type of permit necessary and do the proposed procedures seem appropriate?
- 36) Section 20.72.080 (on page 256) on Resubmittals would limit applicants from submitting the same application within 12 months of previously being denied. The City currently has a similar provision, but it only applies to General Plan Amendments and Zone Changes. Should this be applied to all types of applications?
- 37) The City’s appeal process for many permits [including Section 20.74.030(B) (on page 257)] is currently defined as 5 or 10 calendar days (including weekends) based on the type of permit. The Draft proposes to change that to business days, excluding holidays and weekends. Is that change appropriate?

Part 5—Glossary (Definitions)

The number of definitions has been expanded significantly from 45 in the current ordinance to 239 new or modified definitions. These definitions are key to understanding the Land Use tables in Part 2, so please refer to these definitions when reviewing the chapters in Part 2.

- 38) Are the definitions in the Glossary clear and understandable? Are there any definitions that should be added?

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Part 1--Enactment and Applicability			
Chapter 20.02	Purpose	MMC 20.02 (Title and Purpose)	This chapter has been expanded to address applicability, responsibility, and the zoning ordinance's relationship with the General Plan.
Chapter 20.04	Interpretation	NEW Chapter but includes parts of MMC 20.06 (Districts -Generally)	Adds rules about how to interpret the Zoning Ordinance and procedures for official interpretations/ determinations.
Chapter 20.06	Zoning Districts and Map	MMC 20.06 (Districts -Generally)	Expanded chapter to include new Zoning Districts and Overlay zones and reference to a digital version of the Zoning Map.
Part 2--Zoning District Standards			
Chapter 20.08	Residential Zoning Districts	MMC 20.08 (Residential Districts); 20.10 (R-1); 20.12 (R-2); 20.14 (R-3); 20.16 (R-4); and 20.50 (R-MH)	Combines all the residential zones into one chapter and adds the NEW R-R (Rural Residential) Zoning District to match the General Plan designation.
Section 20.08.020	Land Use Regulations for Residential Zoning Districts	Same as above	Table 20.08-1 displays in table form the permitted land uses, the uses that require a Minor Use Permit (NEW reqt), the uses that require a Site Plan Review Permit (NEW reqt), the uses that require a Conditional Use Permit, and uses not allowed (NEW) for each zoning district. Many new land uses have been added, which were not addressed in the current Ordinance. For comparison purposes, the uses allowed under the Current Ordinance for each zone are provided in the Annotated Version as Table A1 on page 20A, which only included permitted uses, conditional uses, and accessory uses. The Rural Residential (R-R) district is completely NEW.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.08.020 (Cont.)	Land Use Regulations for Residential Zoning Districts	Same as above	Major changes include, but are not limited to: 1) Duplexes allowed with a Minor Use Permit in a R-1 zone vs. current CUP reqt; 2) Community Gardens added as conditional uses in all residential zones; 3) Bed & Breakfasts allowed as CUP's in R-1 & R-2 in addition to R-3 & R-4 currently; 4) Agricultural uses require CUP's in all residential zones except R-R; and, 5) the addition of specific community uses instead of the more generic "public and quasi-public uses" in the current ordinance. Careful review and comparison with existing land use table is encouraged.
Section 20.08.030	Development Standards for Residential Zoning Districts	Same as above	Combines all the development standards (setbacks, heights, lot area, etc.) for all the residential zones. The R-R standards are all new. The standards are now shown in table form in Tables 20.08-2 (Single-Family) and 20.08-3 (Multi-Family and Mobile Homes Parks). Only minor changes are proposed to the standards themselves with the vast majority of them remaining the same.
Section 20.08.050	Rural Residential Zoning District	NEW	This is a NEW zoning district which is not addressed in the current ordinance, but has been added to correspond to the Rural Residential designation in the General Plan.
Chapter 20.10	Commercial Zoning Districts	MMC 20.18 (Commercial Districts); 20.20 (C-O); 20.22 (C-N); 20.24 (C-C); 20.25 (C-SC); 20.26 (C-T); and 20.28 (C-G)	Combines all the commercial zoning districts into one chapter and adds the NEW Business Park (B-P) zoning district to match the General Plan designation.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.10.020	Land Use Regulations for Commercial Zoning Districts	Same as above	<p>Table 20.10-1 displays in table form the permitted land uses, the uses that require a Minor Use Permit (NEW reqt), the uses that require a Site Plan Review Permit (NEW reqt), the uses that require a Conditional Use Permit, and uses not allowed (NEW) for each zoning district. Many new land uses have been added, which were not addressed in the current Ordinance. For comparison purposes, the uses allowed under the Current Ordinance for each zone are provided in the Annotated Version as Table B1 on page 32A, which only included permitted uses, conditional uses, and accessory uses. The Business Park (B-P) district is completely NEW, but generally replaces the current Industrial Admin & Research (I-R) zone.</p>
Section 20.10.020	Land Use Regulations for Commercial Zoning Districts	Same as above	<p>Major changes include, but are not limited to: 1) Residential uses now permitted in the C-C zone vs. requiring a CUP currently; 2) Emergency Shelters principally-permitted in the C-G zone and CUP's in the C-C & C-T zones (State Law requires that shelters be allowed by-right in at least one zone); 3) Allowing Farmer's Markets with a Site Plan Review Permit in all commercial zones except C-O, which requires a CUP; 4) Allowing Mobile Food Vendors with Site Plan Review in C-T and C-G and with CUP's in B-P, C-O, C-N, and C-C (but not in the City Center); 5) changes in how massage establishments are regulated per recent changes in State law; 6) Adding many new land uses not currently listed in the ordinance; and 7) Allowing multi-screen theaters in the C-N, C-T, & B-P with a CUP instead of only allowing them in C-C as in current code. Careful review and comparison with existing land use table is encouraged.</p>

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.10.030	Development Standards and Guidelines for Commercial Zoning Districts	Same as above	Combines all the development standards (setbacks, heights, lot area, etc.) for all the commercial zones. The B-P standards are all new. The standards are now shown in table form in Tables 20.10-2. Only minor changes are proposed to the standards themselves with the vast majority of them remaining the same, except that the minimum lot widths for commercial lots have been deleted and height limits only apply if directly adjacent to residential zones (and exceptions can be granted by the Site Plan Review Committee in those cases as well).
Section 20.10.030-E	Development Guidelines for C-C (Regional Centers only) and B-P Zoning Districts	NEW	NEW guidelines have been added for projects in the regional centers in the C-C zone, but only those outside of the Downtown area, and for the B-P zone. This allows the C-C zone to function more like its corresponding "Regional/Community Commercial" designation in the General Plan.
Chapter 20.12	Industrial Zoning Districts	MMC 20.30 (Industrial Districts); 20.32 (I-R); 20.34 (I-L); & 20.36 (I-H)	Combines all the industrial zones into one chapter, but deletes the Industrial Administration and Research (I-R) Zoning District, which has been replaced with the Business Park zone in the Commercial chapter. A minimum size to establish new zoning districts has been added (5 acres for I-L and 10 acres for I-H).

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.12.020	Land Use Regulations for Industrial Zoning Districts	Same as above	<p>Table 20.12-1 displays in table form the permitted land uses, the uses that require a Minor Use Permit (NEW reqt), the uses that require a Site Plan Review Permit (NEW reqt), the uses that require a Conditional Use Permit, and uses not allowed (NEW) for each zoning district. Many new land uses have been added, which were not addressed in the current Ordinance. For comparison purposes, the uses allowed under the Current Ordinance for each zone are provided in the Annotated Version as Table C1 on page 40A, which only included permitted uses, conditional uses, and accessory uses. The Industrial Admin & Research (I-R) zone has been replaced by the Business Park (B-P) district in the Commercial chapter.</p>
Section 20.12.020	Land Use Regulations for Industrial Zoning Districts	Same as above	<p>Most industrial uses continue to require Site Plan Review Permits as with the current code. Major changes include, but are not limited to: 1) Allowing mobile food vendors with a CUP; 2) allowing gas stations and car washes in association with fleet activities; 3) Allowing limited retail uses as part of a showroom if 10 % of the floor area or less; more than 10% requires a Site Plan Permit, not a CUP as currently; and 4) the list of prohibited uses has NOT changed from the current ordinance, except for some minor clarifications to match the Building Code.</p>

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.12.030	Development Standards for Industrial Zoning Districts	Same as above	Combines all the development standards (setbacks, heights, lot area, etc.) for all the industrial zones. The standards are now shown in table form in Tables 20.12-2. Minor changes are proposed to the current standards, including the removal of height limits except where adjacent to residential and within the Airport area. NEW standards for industrial buffer yards adjacent to residential and performance standards have been added.
Section 20.12.030 (B and C)	Industrial Buffer Yards and Performance Standards	NEW	NEW standard for industrial buffer yards adjacent to residential and performance standards regarding noise, odor, hazards, etc., have been added.
Chapter 20.14	Downtown Zoning Districts	NEW	This entire chapter is NEW and proposes to add 3 new Downtown Zoning Districts-- Downtown Core (D-COR), Downtown Office (D-O), and Downtown Commercial (D-CM) to reflect the unique needs of the Downtown. However, implementation of these zones would require zone changes to existing properties and working with property owners to explain the benefits of the new zones. It is anticipated that this will be done as a separate process from updating the zoning code itself.
Chapter 20.16	Urban Village Zoning Districts	NEW	This entire chapter is NEW and proposes to add 3 new Urban Village Zoning Districts-- Inner Village Residential (R-IV), Outer Village Residential (R-OV), and Village Commercial (C-V) to correspond to the Urban Village designations in the General Plan. These new zones would offer alternative zoning choices for property owners in the City's new growth areas.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Chapter 20.18	Public Use and Agricultural Zoning Districts	NEW for some sections; MMC 20.40 (Public Parking District); 20.46 (A-T-5); & 20.48 (A-1-20)	This chapter is mostly NEW and contains 4 zoning districts--1) Parks and Open Space (P-OS) (NEW); 2) Public Facility (P-F) (NEW); 3) Public Parking (P-PK) (Existing); and 4) Agriculture (A-G) which replaces the current Agricultural Transition (A-T-5) and Restricted Agricultural (A-1-20).
Chapter 20.20	Special Use Zoning Districts	MMC 20.38 (Special Districts); 20.41 (U-T); and 20.42 (P-D)	This NEW chapter includes 2 existing zones--Urban Transition (U-T) and Planned Development (P-D). The current Ordinance also contained the Airport Approaches and Clear Zones (A-P-C), which has been replaced by the Airport Environs (/AE) Overlay Zone in Chapter 20.22; A-T-5 and A-1-20 zones replaced by the A-G zone in Chapter 20.18; Residential-Mobile Homes (R-MH) which has been moved to the residential zones in Chapter 20.08; and Limited Residential (L-R), which has been deleted since it was little used and can be addressed through the Conditional Zoning process in Chapter 20.78.
Section 20.20.010	Urban Transition (U-T) Zoning District	MMC 20.41 (U-T)	No changes are proposed to the U-T zoning district.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.20.020	Planned Development (P-D) Zoning Districts	MMC 20.42 (P-D)	<p>This chapter has been expanded and modified to make the establishment and modification to a Planned Development more streamlined. Major changes include: 1) Reducing the minimum size of a P-D from 20 to 5 acres; 2) Reducing the minimum size to 1/2 City block from 1 whole City block in the Downtown area; 3) Allowing a preliminary Site Utilization Plan (SUP) with less specific details to be approved with the original zoning, adding flexibility to the process for projects not ready for immediate construction; 4) allowing the Director of Development Services to waive some requirements for P-D rezoning requests prior to annexation; and 5) Instead of requiring a Conditional Use Permit from the Planning Commission for all projects, Site Plan Review will be required instead and allows the Site Plan Review Committee (a staff level committee) to approve the Final SUP. The Director may refer the Final SUP to the Planning Commission if over 3 years have passed since adoption of the preliminary SUP.</p>
Chapter 20.22	Overlay Zones	NEW, except for MMC 20.44 (A-P-C)	<p>This entire chapter is NEW and proposes 3 new overlay zones--1) Airport Environs (/AE), which is similar to the current Airport Approaches and Clear Zones (A-P-C) but is substantially modified and streamlined; 2) High Speed Rail (/HSR) which has NOT yet been drafted and will be developed as part of the High Speed Rail Station Planning Grant; and 3) Urban Residential (/UR), which offers increased housing choices, such as townhomes, live/work units, carriage homes, etc.</p>

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Part 3--General Regulations			
Chapter 20.24	Height Measurement and Exceptions	MMC 20.04.120 (Building Height) and 20.62.020 (Height Limits)	This NEW Chapter takes several existing provisions from different parts of the current code and makes minor changes.
Chapter 20.26	Setback Measurement and Projections	MMC 20.04.350 (Setback) and 20.62.040 (Projections into Required Yards)	This NEW Chapter takes several existing provisions from different parts of the current code and makes minor changes.
Chapter 20.28	Accessory Structures	MMC 20.54 (Special Provisions)	This NEW Chapter takes several existing provisions from different parts of the current code and makes minor changes.
Chapter 20.30	Walls and Fences	MMC 20.62.040 (Projections into Required Yards)	This NEW Chapter makes several major changes to the City's existing wall/fence requirements as described below:
Section 20.30.020 (A)	Height Limits for Residential Zoning Districts	MMC 20.62.040 (E, F, H, J, K, & L) (Projections into Required Yards)	Changes include: 1) Allowing the addition of 1 foot of lattice to the top of a fence; 2) Allowing an increase in residential backyard fence heights from 6 to 7 feet; 3) Allowing non-solid fences of up to 6 feet in height (currently 4 feet) in front yards with a Minor Use Permit; 4) Allowing higher fences on reversed corner lots with a Minor Use Permit instead of a CUP; and 5) Allowing fences on open-end cul-de-sacs with a Minor Use Permit vs. current Site Plan Review.
Section 20.30.020(B)	Height Limits for Non-Residential Zoning Districts	MMC 20.62.040 (E & G) (Projections into Required Yards)	Changes include: 6) Allowing up to 8 foot fences in all non-residential zones by right, and in multi-family zones with a Minor Use Permit, and 7) allowing up to 10 foot fences in non-residential zones with a Minor Use Permit (instead of up to 8 feet in industrial zones only with a CUP currently).
Section 20.30.020 [C]	Minor Use Permits for Fences	NEW	Clarifies procedures for granting Minor Use Permits for fences or walls.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.30.030	Corner Vision Triangles	MMC 20.62.040 [E] (1 & 2) (Projections into Required Yards)	Changes include: 8) Allows use of "back of sidewalk" instead of "property line" to measure from if the back of sidewalk is closer to the street; and, 9) The size of the vision triangle varies according to street type (10 feet for sidewalks/alleys; 25 feet for local streets; 40 feet for collectors & arterials; instead of the current 40 feet for all streets, except alleys/driveways which is currently 10 feet.
Section 20.30.040	Fence/Wall Materials	NEW	NEW provisions include: 1) A list of permitted fence materials has been added along with a list of prohibited materials; 2) Barbed wire fences would only be allowed in residential zones with a Minor Use Permit; 3) Razor wire fences in all zones would only be allowed with a Minor Use Permit; and 4) Electric fences are only allowed in non-residential zones, 5 feet from the property line and with a Minor Use Permit.
Chapter 20.32	Interface Regulations	MMC 20.52 (Interface Regulations)	Instead of requiring a CUP for Interface situations, a Site Plan Review Permit (but with a required public hearing) would be required instead. New zones, C-SC, D-CM, B-P, & A-G, were added to the table.
Chapter 20.34	Creek Buffers	NEW	This chapter is entirely NEW although such buffers are currently required in the General Plan. This chapter sets forth land use regulations and performance standards for such buffer areas.
Chapter 20.36	Landscaping	NEW	This chapter is entirely NEW. It sets forth requirements for landscape and sprinkler plans, minimum required landscape areas for residential and non-residential uses (see Table 20.36-1) ranging from 10 percent to 15 percent of the lot area, and landscape standards. This chapter implements some new State law requirements in drought conditions and defers to the City's Water Efficiency Ordinance and State Law if there are conflicts.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Chapter 20.38	Parking and Loading	MMC 20.58 (Off-Street Parking)	This is a substantial modification to the existing Parking chapter. Major changes include the following as outlined below:
Section 20.38.020	Applicability	MMC 20.58 (Off-Street Parking)	Parking requirements for all land uses are now presented in table form, Table 20.38-1, which should be compared carefully with the existing requirements as summarized in Table D1 on page 140A of the DRAFT. In summary, many land uses were added that were not covered in the existing ordinance and many requirements that were based on factors, such as employees or # of seats, which are often difficult to determine when buildings are initially built have been changed to offer options to be measured by the size of the building or other physical features like most other land uses. One notable change from the current ordinance is to base parking for apartments on #'s of bedrooms instead of on # of units as is now.
Section 20.38.030	Required Parking Spaces	MMC 20.58.020 (# of Spaces Required), 20.58.330 (Uses Not Specified), 20.58.340 (Exemptions), 20.58.380 (Mixed Occupancies), & 20.58.410 (Units of Measurement)	Changes include allowing the Director of Development Services to determine the reqt for unlisted uses vs. current reqt for Planning Commission or City Council to do so; and adding information about a 15% floor area reduction for non-public areas, which has been longstanding City practice. NEW provisions regarding how to determine the reqts for unlisted and unknown uses have been added.
Section 20.38.040	General Requirements	MMC 20.58.010 (Required) & 20.58.370 (Location)	Changes include shifting a review authority for off-site parking requests to City staff and allowing the Site Plan Review Committee to determine the "reasonable" distance from the use where off-site parking can be provided instead of having set distances for different uses as in current ordinance.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Section 20.38.050	Parking Reductions	MMC 20.58.400 (Joint Use) & 20.58.390 (Common Parking Facilities)	Changes include leaving determinations based on parking demand studies to the Director of Development Services instead of the Planning Commission. NEW provisions have been added regarding reductions for low demand uses, uses with heavy transit use, and mixed uses have been added.
Section 20.38.060	Parking Assessment Districts	MMC 20.58.470 through 20.58.520 (Parking District)	No changes to the existing ordinance provisions for parking assessment districts. (Currently the only one in the City is the Downtown Parking District.)
Section 20.38.070	Parking Design and Development Standards	MMC 20.58.350 (Size & Access), 20.58.360 (Access Drive), & 20.58.385 (Landscaping)	Changes include referencing the City's Design Standards for parking space dimensions to ensure consistency; adding the landscaping standards to the code instead of referring to a 1985 document that hasn't been updated; and adding some reqts for concrete curbs, lighting, pedestrian access, and screening.
Section 20.38.080	Bicycle Parking	NEW	This section would require that bicycle parking spaces (for short-term and long-term use) be provided for most land uses. The Zoning Ordinance Focus Group recommended requirements that matched the new "CA Green Building Code." The City Bicycle Advisory Commission recommended more stringent standards. The DRAFT attempts to strike a balance between the two approaches. Please see the DRAFT, which shows the differences between the two group's recommendations.
Section 20.38.090	Off-Street Loading	MMC 20.58.460 (Off-Street Loading Spaces)	Modified/expanded version of the current ordinance with new reqts for design, but the required number of such spaces have not changed from the current ordinance.
Chapter 20.40	Small Lot Single Family Homes	NEW	This is a NEW chapter but is based on the Small Lot Design Guidelines adopted by the City in 2008. This would allow small lot single-family homes to be approved with a CUP in RP-D, R-IV, R-OV, and R-2 zones.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Chapter 20.42	Second Units	MMC 20.54.350 (Secondary Dwelling Units)	This chapter contains minor modifications to the City's requirements for second units, which is based on State Law. State law limits much of the City's discretion regarding such units. One minor change would be to require second units to be approved with Minor Use Permits, instead of Site Plan Review, which is more consistent with State Law which does not allow public hearings for such units.
Chapter 20.44	Special Land Use Regulations	NEW and MMC 20.54 (Special Provisions) and 20.62.060 (Recycling Facilities)	This is an expanded version of the existing "Special Provisions" chapter, with other portions of that existing chapters moved to other more relevant chapters. NEW regulations have been added for food trucks in fixed locations, check cashing/ payday loan establishments, community gardens, fraternities/sororities, live/work units, photovoltaic energy systems, single-room occupancy, and emergency shelters. The City's provisions for recycling facilities has been substantially expanded, the requirement for bed & breakfasts to be within historic structures was removed, and new rules for outdoor display of merchandise have been proposed. NEW restrictions on tobacco sales in proximity to schools and other youth-oriented activities were recommended by the Focus Group after a presentation from the County Health Dept.
Chapter 20.46	Residential Design Standards	MMC 20.54.250 (Development Standards for Single-Family & Mobile Homes), 20.54.290, 20.54.300, and 20.54.310 (Multi-Family Design Standards)	Although a NEW chapter, the design standards in this chapter are all in the existing ordinance. Only minor formatting changes were made and the standards were reorganized to avoid duplication.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Chapter 20.48	Home Occupations	MMC 20.54.100 (Home Occupations)	The City's rules regarding home-based businesses are proposed to be changed to address issues that have arisen over time with such uses. Minor home occupations which are consistent with the current code are proposed to be different from "Major Home Occupations" which are NEW and will have additional reqts. Provisions regarding Cottage Food Operations as defined in a recent State Law have also been added.
Chapter 20.50	Temporary Uses and Structures	MMC 20.62.050 (Temporary Outdoor Uses) and 20.54.170 (Circus or Carnival)	Provisions for temporary uses have been consolidated in this NEW chapter. NEW provisions for Farmer's Markets, off-site construction yards, employee trailers, and real estate offices have been added.
Chapter 20.52	Nonconforming Parcels, Uses and Structures	MMC 20.60 (Nonconformities)	Substantial modifications have been proposed to the current ordinance with the goal of providing more flexibility for non-conforming uses to do minor alterations and expansions and to rebuild if destroyed involuntarily.
Chapter 20.54	Condominiums	MMC 20.56 (Condominiums)	Minor modifications have been proposed to this chapter to delete some out-of-date provisions.
Chapter 20.56	Density Bonus	MMC 20.88 (Density Bonus)	This chapter is a substantial modification to the existing ordinance in order to conform to recent changes in State Law, which is very specific about what incentives and standards must be made available. This proposal meets the minimum requirements under State Law.
Chapter 20.58	Wireless Communications Facilities	MMC 20.92 (Wireless Communications Facilities)	Much of the existing ordinance has remained the same, but substantial changes have been proposed to the maximum heights (Table 20.58-1) and to the permit requirements (Table 20.58-2) in order to encourage more stealth facilities and to streamline the process for approving stealth facilities. Refer to Table A on page 216B of the DRAFT for a comparison to the existing ordinance.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Chapter 20.60	Adult Entertainment Businesses	MMC 20.90 (Adult Entertainment Businesses)	No changes are proposed to the existing chapter except that the definitions have been removed and a reference provided to MMC 5.58, which has the same definitions.
Chapter 20.62	Signs	Various	This NEW chapter has consolidated all the sign provisions spread throughout the existing Zoning Ordinance. These provisions should be in the Sign Ordinance instead, but since a comprehensive update of the sign ordinance is NOT part of this project, none of the provisions have been changed. A comprehensive update of the Sign Ordinance, along with extensive outreach to local businesses and citizens, would be the proper avenue in which to consider amendments to the sign provisions in the future.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Part 4--Permits and Administration			
Chapter 20.64	Administrative Responsibility	MMC 20.64.050 (Site Plan Review Committee); MMC 2.20 (Planning Commission); MMC 2.24 (Board of Zoning Adjustment); MMC 20.86 (Design Review Commission)	This NEW chapter spells out the roles of the Planning Agency, City Council, Planning Commission, Site Plan Review Committee, and the Director of Development Services in either reviewing or approving permits. These roles are summarized in Table 20.64-1 (Review & Decision-Making Authority). Although the chapter is NEW, the roles are consistent with the City Charter, current City practices, and current code provisions.
Chapter 20.66	Permit Application and Review	NEW and MMC 20.78 (Fees)	This NEW chapter outlines application filing, fees, and review procedures. Although NEW, the procedures are consistent with current City practices, except for a new provision regarding when an application can be deemed withdrawn due to applicant inactivity.
Chapter 20.68	Permit Requirements	MMC 20.64 (Conditional Use Permits); MMC 20.86 (Design Review); MMC 20.68 (Site Plan Review); & MMC 20.66 (Variances)	This NEW chapter consolidates all the permit requirements into one chapter. NEW permits have been added--Minor Use Permits; Minor Modifications, and Special Project Permits. Site Plan Review Permits have been significantly expanded for use in all zones (currently, mostly used in Industrial zones) and public hearings are now required for non-industrial projects. (Industrial projects will continue to have a streamlined process with no public hearings.)
Chapter 20.70	Public Notice and Hearings	MMC 20.72 (Public Hearings)	This is a substantial expansion of the existing public hearing chapter, but the requirements are consistent with State law and current City practices. The only change is to the appeal procedures which have been changed from 5 calendar days to 5 business days.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Chapter 20.72	Post-Decision Procedures	NEW and MMC 20.76.110 (Reapplication--Time restraint)	This is NEW chapter that deals with various procedures that occur after a permit is approved. These provisions are consistent with current City practices, except as noted. NEW provisions include optional performance guarantees; the legislative action agreements which have been required by the City since the 1990's but have never been referenced in the Code; a formal process for approving changes to an approved project; time limits and extensions; permit revocation procedures; and expanding the prohibition of submitting the same application within 12 months of being denied to include all permits instead of just Zone Changes and General Plan Amendments as it is now.
Chapter 20.74	Appeals	MMC 20.96 (Appeals)	This chapter expands the current appeals chapter but is consistent with current City practices. The one major change is to change the appeal period from calendar days to business days.
Chapter 20.76	Covenants for Easements	MMC 20.94 (Covenants for Easements)	This chapter, except for some minor editing and re-formatting, is the same as the current chapter which was adopted in 2003. Covenants for easements is a process which allows easements to be granted between properties under the same ownership.
Chapter 20.78	Conditional Zoning	MMC 20.80 (Conditional Zoning)	This is a modified and expanded version of the current chapter. Changes include removing the requirement for Site Plan Review for all uses in a Conditional zone, and adding provisions to address amendments to the conditions, subsequent zone changes, and enforcement.

Zoning Code Update--Summary of Major Changes

New Code Section	Topic/Title	Current Code Section	Summary of Change
Chapter 20.80	Zoning Ordinance Amendments	MMC 20.76 (Amendments)	This is a modified and expanded version of the current chapter. Changes include clarifying who can initiate zone changes; requiring a public notice to a property owner even if the Zoning District is not being changed; extending the time frame for a Planning Commission decision from 35 days to 90 days after the close of the public hearing; if the Planning Commission denies a zone change, the applicant must request a hearing before the City Council instead of automatically going to the Council; allowing referral back to the Planning Commission by the City Council if the application has been substantially modified but not requiring it; and modifying the effective dates to conform to State Law.
Chapter 20.82	General Plan Amendments	NEW	There is actually not a chapter in the current code dealing with General Plan Amendments, but staff has used the provisions of MMC 20.76 above. The same changes noted above to current practices are also included in this chapter.
Chapter 20.84	Reasonable Accommodations	MMC 20.98 (Reasonable Accommodation)	The only change to the current chapter, which was adopted in 2009, is to designate the Director of Development Services as the hearing officer instead of the City Manager.
Chapter 20.86	Development Agreements	NEW	This is an entirely NEW chapter but is consistent with State Law, City Council Resolutions #1995-06 and #2005-101, and current City practices.
Part 5--Glossary (Definitions)			
Chapter 20.90	Glossary (Definitions)	MMC 20.04 (Definitions)	The number of definitions have been expanded significantly from 45 in the current ordinance to 239 new or modified definitions.



CITY OF MERCED ZONING ORDINANCE UPDATE FOCUS GROUP

RECOMMENDATIONS

Mission of Focus Group

Update the Zoning Ordinance to be more user-friendly and easier to understand for the Community.

Focus Group Members: Jim Abbate, Christina Alley, Ann Andersen, Todd Bender, Kenra Bragonier, Adam Cox, Tony Dossetti (Council Member), Ron Ewing, Loren Gonella, Forrest Hansen, Flip Hassett, Jack Lesch, Elmer Lorenzi, Des Johnston, Guy Maxwell, Carole McCoy (former Planning Commissioner), Michelle Paloutzian, Garth Pecchinino, Joe Ramirez, Mike Salvadori, Stan Thurston (Mayor), Brandon Williams (former Planning Commissioner), Jim Xu, and Chairman Bruce Logue

Introduction

The Zoning Ordinance Focus Group met a total of 17 times from July 2013 to March 2015. The Zoning Ordinance Focus Group was made up of Merced residents with various interests, including developers, engineers, planners, real estate, banking, and other interested citizens. Over the course of the meetings, the Focus Group made recommendations on the draft Zoning Ordinance. The following excerpts from the Focus Group minutes represent the recommendations made by the Focus Group.

Minute Excerpts

- 1) **Meeting of July 17, 2013**—Overview and introductions only.
- 2) **Meeting of July 31, 2013**

Organization: Ms. Andersen reviewed other cities' ordinances and advised that it's not about the content, but the navigation of the document (ordinance) that concerned her noting that web access and searchability needs to be user friendly. There was also some discussion on improving the "Definitions" of the Code and placement in the document whether it is located in the front or back of the Code.

Planned Developments: Mr. Lesch spoke favorably about the staff level design review and site plan review. It was explained that in the past some applicants received entitlements from the City Council (i.e., general plan amendments, zone changes, etc.), but were not ready to proceed with a conditional use permit (CUP) and construction. Mr. Xu stated that other developers have detailed plans and must go through an additional process (public hearing for the CUP) costing time and money. Mr. Salvadori suggested a window of time be attached to quicken the process for those who are ready to develop immediately as opposed to those who wait a few years.

Churches: While Mr. Lesch felt that there should be a CUP process for them in residential zones, but not in commercial zones, Mr. Hassett felt that churches should not be encouraged within the downtown area. There were also comments from Mr. Pecchinino and Ms. McCoy that churches don't pay property tax, and if it's a small church (under 50 people) and parking is not impacted, it should be allowed.

3) Meeting of August 22, 2013

Conditional Use Permits (CUP) for Religious Institutions: The Focus Group discussed various pros and cons of requiring CUPs for churches in certain zones, but streamlining the process for them in others. Discussion focused on a church's impact to an area such as Downtown where parking, noise, and hours of operation could have negative impacts, or in industrial zones where some industrial uses could not locate near churches and it makes it difficult to market the industrial property. Planning Manager Espinosa explained that there are Federal laws on how cities can treat churches, but the CUP process allows the City to apply conditions limiting occupancy, hours of operation, or sharing the location with another church who has services at different times or on different days.

Signs: The Focus Group also discussed the problem of too many signs in town causing a cluttered look. It was discussed whether it was a sign problem or the type of use that is the problem, such as bail bond businesses or tattoo parlors. The Focus Group agreed that such businesses seem to always have excessive signage.

Streamlining CUP Process in Planned Developments: Ms. Espinosa asked the group's thoughts on having the CUP considered at the same time as the zone change or general plan amendment. There is often confusion from the public when the zoning and land use is approved by Council and they get another public notice for the CUP later on.

Some members thought that there should be no co-mingling of the approvals

because developers don't want to incur the expense of preparing detailed plans for the site plan, design, and landscaping of the project when the land use and zoning might be denied by the Council. Mr. Xu said that because a planned development requires so much detail, the CUP process should remain in place for planned developments.

Mr. Pecchenino said there are a lot of planned developments now because if the zoning doesn't allow the proposed use then zoning is changed to a planned development to allow the use through the CUP process. Ms. Espinosa said that the City would still need the requirements of the code for planned developments since they will still exist, but could establish a new zoning district that would allow for streamlining the process.

Outdoor Displays: Ms. Espinosa explained that they have gotten a little out of control in recent years. She showed some examples of sites where outdoor displays block access, circulation, and sidewalks. The code could be changed to state that they are not allowed at all, but that is an enforcement issue and there is currently not enough staff to provide enforcement. The code could include some standards for how much display area is allowed, i.e., 50 square feet, a percentage of the business' frontage, types of goods, not allowed in easements, and must be moved inside at close of business, etc.

Ms. Bragonier thought that it would be easier to enforce if they are not allowed at all. Mr. Maxwell said that one size won't fit all and perhaps we should just regulate where they could not go (in drive aisles, blocking sidewalks, etc.) rather than on a percentage of frontage or a specific square foot area, and that the soda machines should not be regulated.

Mr. Lesch said that the emphasis should be on signs rather than outdoor displays. He also mentioned recycling centers and said the City cannot require a CUP; they are currently processed under Site Plan Review where conditions can be applied or it can be denied if determined to be detrimental to the area.

Recycling Centers: Ms. Espinosa added that recycling centers attract other issues such as abandoned shopping carts and public intoxication. When recycling centers are located in Neighborhood Commercial zones near residential zones the City receives numerous complaints. She explained that they are allowed in all commercial zones per state law except processing facilities which are allowed in industrial zones.

Home-Based Businesses: There was also a brief discussion regarding home-based businesses such as day cares with 14 or fewer children or residential care facilities with 6 or less at the facility. There are no zoning requirements for

these uses per State law and the City receives numerous complaints from nearby residents.

Garage Conversions: Ms. Espinosa explained that most garage conversions are illegal because the zoning ordinance requires one off-street parking space for each residence and the driveway is not a “legal” parking space because it is within the setback area. Most of the existing conversions are illegal and building permits were not obtained.

Ms. McCoy said that some conversions are very old and not up to code and some home sales have not occurred because buyers could not obtain insurance. Mayor Thurston said he would like to see this addressed somehow that does not punish those conversions that were done years ago, but not to allow new ones.

Mr. Cox asked why the driveway is not a legal space and staff responded that if the spaces in the garage are lost then it causes more parking on the street which clutters the neighborhood. Ms. Espinosa asked the group to consider if the zoning code should be changed to allow the driveway as a legal parking space.

Mr. Lorenzi also pointed out that you cannot park in back of the house and the code states that you cannot park RV’s and boats on the street, but there is not any code enforcement of this because there is not enough staff. He said that something needs to be done about that.

Ms. Espinosa asked if the Focus Group thought the zoning code should be changed to allow the driveway to count as off-street parking in order to allow the garage conversions. No clear consensus was reached.

4) Meeting of September 12, 2013

Driveway Carports: Ms. Espinosa provided examples of front yard carports and explained that they are illegal if within the 20-foot front yard setback in a residential zone. She advised that there are concerns, but if the Group was favorable to allow them, minimum standards are needed such as carport materials, anchoring, location, and the requirement for a building permit.

The Focus Group discussed safety issues such as blocking visibility of oncoming vehicles or pedestrians for someone backing out of their driveway, and possible issues with not properly anchoring the carport. Other concerns were that streets could appear cluttered or blighted without specific standards or if outdoor storage were to accumulate in driveways. Some felt that enforcement was the issue with existing illegal carports; however, with the City budget and

current staffing levels, there are competing priorities. Mr. Gonzalves asked the Focus Group to not make decisions regarding the Zoning Ordinance based on current budget or staffing levels as a Zoning Ordinance has at least a 20-30 year life.

Front Yard Fences: Ms. Espinosa explained the current ordinance, requests from the public to increase fence heights due to young children, dogs, safety purposes, potential issues with gates across driveways, and fence materials. After requesting feedback on whether or not fence heights in the front yards should be increased, the consensus was to keep the code as it is.

Backyard Fences: With regards to increasing backyard fences to 8-feet in height, the Focus Group discussed having standards to exclude barbed or razor wire and electrical fences, fences in areas that have grade differences (one side of the fence is 6-feet and the other side is 8-feet due to lot elevations), the use of lattice or compatible materials, and concerns for public safety. The Focus Group was favorable to increasing the backyard fences to 8 feet. Ms. Espinosa explained that a building permit would be required for an 8-foot fence. (NOTE: At a later date, the Focus Group decided that a maximum height of backyard fences should be 7 feet, consistent with the City of Atwater's ordinance.)

Home Occupations (Home-Based Businesses): Ms. Espinosa explained the eight conditions associated with a home occupation, concerns with having employees (vehicles parking on streets), along with issues with businesses such as a car repair operation that on the one hand should be prevented in a residential neighborhood (due to noise, traffic, oils and other storage issues) and requests for piano lessons (1 appt. per hour) where the ordinance is inflexible. Examples of home based businesses were discussed such as yard sales, repairing vehicles, daycares, cottage food operations (regulated by the State and Merced County Health Department), and public agencies being able to exempt themselves.

In response to concerns regarding enforcement on current and future home-based businesses, Ms. Espinosa explained the process of elevated enforcement where sometimes complaints can be handled with a phone call but others require involving the City Attorney's Office. She also explained that the Consultants have proposed having two categories for home occupations, a minor (allowed by right) and major (requires a minor conditional use permit). The consensus of the Focus Group was that the current code is fine as long as complaints from home occupations are enforced.

5) Meeting of September 26, 2013

Levels of Review: Director of Development Services David Gonzalves explained that it's time for the Focus Group to look at the proposed levels of approval for different land uses in the new ordinance whether it is from staff or the Planning Commission and City Council. He asked that the group keep in mind that the Zoning Ordinance will be around a long time so it's prudent to think about its long term impacts. Mr. Gonzalves stated that the City Manager and City Council have indicated their preference to streamline the development process; and, stressed the need for the group's input as their recommendation will be going to the City Council.

Home Occupations (Home-Based Businesses): Ms. Espinosa explained common issues with home occupations as well as striking a balance to allow certain businesses that have customers come to the home and not be an impact to neighbors, such as piano lessons versus swimming lessons. She asked if the group would be in favor of this and if there would be standards if allowed. Ms. Espinosa also advised that Cottage Food Operations are allowed by State law as a home occupation which allows people to purchase food items from a residence.

Ms. Espinosa explained that the Consultants have proposed having two categories for home occupations, a minor home occupation - allowed by right, and major home occupation - requires a "minor" (staff level review) conditional use permit (CUP). She added that there would be certain restrictions with the minor CUP to address deliveries, number of employees and clients, outdoor storage, and authorizes the Director of Development Services to suspend the activity if detrimental to the health and safety of the neighbors. Additionally, there is an appeal process to Planning Commission (if denied by staff), and City Council (if denied by the Planning Commission). A minor CUP would require a public hearing where neighbors are invited.

There was some discussion that the process was too vague, that entrepreneurs should be given more flexibility, that the requirements should be clear and address noise, parking for staff and customers, hours of operation, etc. For the most part the consensus was that staff is heading in the right direction.

Food Trucks: Ms. Espinosa described the difference between Street and Sidewalk Vendors and Food Vendors at Fixed Locations and issues to consider such as complaints regarding debris, loitering, parking, time limits, etc. The discussion included whether or not to allow food trucks at birthday parties which could be in residential neighborhoods, a park, or street fairs, etc. Other suggestions were to have a moratorium, or setting up a location where food trucks could gather on a rotating basis, allowing a food truck to replace a

previous one (similar to “new” fireworks booth vendors), and allow these businesses to grow. “Off the Grid” in the Bay Area was given as a successful organized business (private developer) with local bands and new food truck businesses could locate there to give their business a shot.

It was also suggested to keep in mind the changes in population especially students (UC Merced and Merced College) and others who communicate using Facebook and other social media. Lastly it was suggested that the requirement restricting food vendors near churches holding regular services on Sundays should extend to other days of the week as well.

6) Meeting of October 3, 2013

New Zoning Districts: Director of Development Services David Gonzalves explained that the goal is to focus on Residential and Commercial parts of the Code such as design standards and protecting neighborhoods. He advised that staff will be creating an agriculture/residential (or Rural Residential) zone for those properties that are currently in the County of Merced (correlating with UC Merced area) but are within our sphere of influence. He added that this is intended to ease the “fear” of annexation for those concerned with a possible change to their lifestyle with regard to the keeping of animals or hooking up to sewer and water.

Ms. Espinosa explained that she’s currently working with the consultants on this new zone to balance issues, and added that the closest zone that we currently have is an R-1-20 (for 20,000 square-foot lot minimum). Ms. Espinosa discussed the process of annexation noting that the properties must be contiguous and answered questions regarding acre lots, City services, etc. She emphasized the need to find a way to make people comfortable with the annexation process rather than to protest the process. An example was given where a neighborhood blocked a prospective annexation by protesting the annexation.

“Purpose” Sections of Draft Code: There was discussion that the “purpose” of the zones is there, however, the “intent” of the zone is not, and that there may be inconsistency from the old ordinance to the new with terms such as “high quality development” for example relating to mobile home parks. Ms. Espinosa indicated that we need to know how readable the document is so if it is confusing we need to correct it. She explained that the consultants were tasked with streamlining the ordinance so there’s not a lot of cross- referencing, but that is something that can be fixed by adding cross references. She advised that the nuts and bolts for what land uses are allowed and what permits are needed are found in Tables on Pages 1 and 2, whereas the design standards are on Pages 6 and 7.

Residential Zones: There was a suggestion to add “Home Occupation” in Table A, of Page 1, under the residential section. The Focus Group discussed daycares and the impacts on the neighborhood, the difference between permitted use and minor conditional use permit, and the difference between a “group home” and “dwelling groups” and restrictions within each. Ms. Espinosa explained that some uses like daycares are State regulated and gave the definition of a “household” and “family.” In response to using the term Community Uses and Community Assembly instead of “public” and “quasi-public” terminology Ms. Espinosa said that we are attempting to use more current or up- to-date terminology. However, with regards to “colleges” they need to be defined similarly to “schools.”

There was discussion on single-room occupancy where students could rent a room in a home, but the way the code is written, it’s not allowed. Ms. Espinosa indicated we would check the glossary to make sure it is clear as to what is allowed. Also, some neighbors are not receptive to having student housing in the neighborhood. With a second unit on a single-family residential lot, one of the two units must be owner-occupied.

Residential care facilities are exempt from local zoning as long as there are 6 or fewer people in a house. If there are more than six, we can require a process and impose reasonable standards such as spacing, concentration, and parking through a non- discretionary permit. Ms. Espinosa explained that the State would allow a staff level process granted by the Director where neighbors within 100 feet of the site are notified 10 days prior to the hearing date.

While a few people felt large family daycares should be regulated, others felt there were too many regulations and if there haven’t been many complaints, why do so. At this time, Chairperson Logue asked for a voice vote of those present and the consensus was not to regulate large family daycares. The consensus of the Group was, however, in favor of regulating residential care facilities if allowed under State law.

7) Meeting of October 17, 2013

Parks: The Focus Group discussed the process for approval of parks. Staff explained that a Conditional Use Permit (CUP) is required in all residential zones for the land use for a park, but that the design of the park is handled as a separate process not involving the Planning Commission. The Group discussed the various sizes and types of parks and the impacts on neighborhoods from lack of parking. Staff explained that there is no standard for parking for neighborhood parks and that it would be helpful to staff if there was such a standard. The Group was of the consensus that there should be a parking standard for parks and the size, type, uses, and design of the park should dictate the parking requirements for parks.

Residential Zones: The Group then discussed the land use tables for residential zones. Staff explained that the uses and development standards have been put in table format so that they are easier to understand than the paragraph format in the current ordinance. There have been no changes to the uses or standards except minor changes to exterior and side yard setbacks so they are consistent throughout the code.

Staff noted that there would need to be clarification or removal of footnote [2] on Page 7 regarding the 10-foot yard setback for all interior yards. Staff and the Focus Group concurred that this did not make sense for all interior yards to be ten feet for taller buildings, especially if trying to encourage density. Staff will review with the consultant and either clarify or remove the footnote.

Regarding MMC Section 20.08.030, Subsection F Parking, Ms. ESPINOSA explained that this is the section that would need to be modified to allow garage conversions and legal parking spaces in the driveway and/or on the street. Following a brief discussion, the consensus of the Focus Group was to not make any changes to the required parking in residential zones. There were no more comments on the Residential section

Commercial Zones: Regarding Commercial zoning, the proposed ordinance combines all commercial zones and adds the new Business Park zone into table format so land uses are easier to understand. The Focus Group agreed that there is a clear distinction between heavier use Business Parks vs. support use Business Parks and the Business Park zone should be part of the Commercial land use table to allow flexibility, and not the Industrial land use table.

It was also noted that under the current General Commercial zone, there is a 4-acre minimum size for the zone itself but there is no minimum in the proposed ordinance. Staff agreed that without a minimum acreage requirement, a single lot could be rezoned, impacting the surrounding area. It was agreed that the minimum acreage in the current code should be retained.

8) Meeting of October 31, 2013

Commercial Zones: The Focus Group discussed if Colleges and Trade Schools should be allowed with a Conditional Use Permit (CUP) in the C-G zone instead of not allowed at all. The consensus was that they should be allowed with a CUP since depending on the curriculum, it might be appropriate in the C-G zone.

Day Care Centers: The Focus Group considered if Day Care Centers should be a conditional use in the B-P zone instead of permitted. Since the state has adequate regulations with regard to this use, the consensus was to lean towards less regulation.

Emergency Shelters: The Group debated whether Emergency Shelters should remain not allowed in the C-C zone or should be allowed with a CUP. Planning Manager ESPINOSA explained that the state law requires that cities have at least one zone where Emergency Shelters are principally permitted. The City of Merced has proposed to permit them in the C-G zone as a permitted use and allow them in the C-T zone as a conditional use. Several members thought the Rescue Mission should not set a precedent for use in that location (a C- C zone), but could be grandfathered in. Some thought that allowing shelters in other commercial zones may deter businesses from wanting to locate in those particular zones. The consensus was to allow the Emergency Shelters to be principally permitted in the C-G zone and to not allow them in other commercial zones.

Government Offices: The Group discussed if Government Offices should be a permitted use in the B-P zone instead of not allowing them at all. The consensus was to continue to not allow them in the B-P zone to preserve those zones for traditional business park uses.

Parks: The Group deliberated about if Parks, which are proposed as conditional uses in C-O, C-N, and C-C, should be allowed with a CUP in other commercial zones. Since there are plenty of zones that allow Parks and because commercial development is a desirable use in the commercial zones, the consensus was to not allow Parks in other commercial zones.

Public Safety: The Group reviewed whether Public Safety Facilities should be allowed with CUPs in all commercial zones instead of only being allowed with a CUP in the C-T and C-G zones. The Group concurred it would be beneficial to allow Public Safety Facilities with a CUP in all commercial zones.

Alcohol Sales: The Group pondered the consultant's proposal that CUPs be required for all businesses wishing to sell alcohol. Currently, CUPs for alcohol sales are only required for businesses whose buildings are 20,000 square feet or less, since that would be a larger part of their business. Since the result would be a marked increase in CUPs and a lot more restrictiveness, the consensus was to continue the current process.

Bail Bonds: The Group debated whether Bail Bond Businesses should continue to be permitted in the C-C zone (but prohibited in the City Center) and allowed with a CUP in the C-O zone or should changes be made. Mention was made that most Bail Bond Businesses were so low key that most businesses were not even aware that they were located near them. It was also noted that they are required to follow our sign code and get a sign permit. The consensus was to continue the current process.

Check Cashing: Check Cashing Establishments would be allowed in all commercial zones with a CUP as proposed; the Group considered if there were some zones where they should not be permitted. The consensus was that overall, they should be treated like any other business and not be overregulated, but C-O zones are supposed to be for office uses, the Check Cashing Establishments really aren't a business park use so should not be in the B-P zone, and the C-SC zones would not be appropriate locations either.

Flea Markets:The Group briefly discussed if Flea Markets should be allowed anywhere other than with a CUP in the C-T zone. The consensus was that they should be allowed with a CUP in the C-T and C-G zones and not in the C-O, C-N, or C-C zones.

Funeral Parlors: The Group reviewed Funeral Parlor and Mortuary uses and agreed that they should be principally permitted in the C-G zone, and allowed as CUPs in all other commercial zones.

Gas Stations: The Group conversed about Gas and Service Stations. It is proposed that they be principally permitted in C-T and C-G zones and allowed with a Site Plan Permit in the C-N, C-C, and C-SC zones. The consensus was that the proposal was fine except in the C-N zone, they should be permitted with a CUP so that neighbors would get notified if a Gas or Service Station was going into their neighborhood. Planning Manager ESPINOSA added that the use table would be reviewed for the C-SC zone to make sure it was consistent with the newly-adopted standards for that zone.

Hotels: The Group discussed if Hotels and Motels should be allowed with a CUP in the B-P zone. It was noted that other cities have successfully allowed this type of development. The consensus was to keep our options open and allow Hotels and Motels in the B-P zone with a CUP.

9) **Meeting of November 14, 2013**

Check Cashing: Chairperson LOGUE asked to reopen the discussion from the last meeting regarding pay day loan services and whether the code should be more restrictive to deter these types of businesses in the downtown area. The Focus Group discussed that and whether they should then include other types of businesses (pawn shops, tattoo parlors and hookahs). Group Members RAMIREZ and THURSTON both provided information that there are other changes in the works (at the State or Federal level) that would be restrictive and make it difficult for the payday loan types of businesses to continue.

The Group suggested the following regarding payday loan businesses:

CO/CT/CG: Conditional Use

CN/BP: Not allowed (those existing would be non-conforming uses)

Central Core: More restrictive with conditional uses.

Shopping Center Commercial (CSC): Not allowed. Very restrictive use.

Commercial Zones: The Group continued their discussion regarding the land use table. Ms. ESPINOSA explained that the consultant proposed a downtown residential zone to address the smaller residential lots in that area. Currently, most downtown residential lots are 50x150' lots, but are zoned R-1-6 because that was the closest zoning designation that fit.

Pawn Shops: The Committee made the following recommendation:

CO/CN//CSC/CT/BP: Not Allowed

CC: Conditional Use

CG: Permitted Use

Personal Services: The Group recommended that for Business Park zones, that Personal Services should require Site Plan Review (SP) with Footnote 6.

Street and Sidewalk Vendors: The Group discussed exploring the idea of having an area established specifically for food trucks. Currently they are only allowed in the CT zone. Ms. ESPINOSA asked if the Group thought it appropriate that they are allowed to locate in a Business Park or Industrial zone with a use permit. She further explained that the definition only refers to food and drink and asked if the Group thought that the definition should include merchandise. The Group agreed that the definition should only be for food and drink so the category should be changed to "Mobile Food Vendors" and should be a conditional use in Business Parks.

Vehicle Parts and Accessories Sales: The Group agreed that they should be a permitted use in a C-G zone.

Large Recycling Collection Facilities: The Group agreed that they should be a Conditional Use in the CT and CG zones.

Parking Facilities: The Group said they should be permitted in all zones.

Vehicle Sales: Group Member BRAGONIER said that she didn't think vehicles sales should be allowed in the downtown core area and Ms. ESPINOSA said that the table would include Footnote 12 which defined the downtown core area and restricted that use from that area.

10) Meeting of December 12, 2013

Business Park Development Guidelines: The Focus Group discussed the use of the terminology “may” vs. “shall” vs. “should”. The Group discussed the lack of consistency within the definitions. Staff explained that there are instances where items or design are mandated by State or Federal statute to be “shall”, but that staff needs room to adjust a design and work with a developer if the project hits most of the marks, and so there needs to be room for some flexibility to meet the developer’s specific design requirements.

Focus Group Member BENDER said that from a developer standpoint there are a lot of “shalls” that they have to heed and more “shoulds” would allow the project to work. If the project needs exceptions, then the Planning Commission and City Council should make the decision by establishing conditions for the individual projects.

Following further discussion, the Focus Group recommended the following (beginning on Page 22 of 9-12-2013 memo):

Page No.	Item No.	Terminology
21	4a-d	Change to “shall”
22	5a-c	Change to “shall”
22	7a and 7b	Change to “shall”
22	8a	Remain “shall”
22	9a and 9b	Change to “shall”

Ms. ESPINOSA indicated that she understood the Group’s direction and could go through the remainder of the preliminary draft and make the appropriate changes and bring them back to the Group for review.

Planning Manager ESPINOSA explained there will be new zoning districts proposed such as “Urban Village” and new Downtown designations, and discussed the options for rezoning some of the downtown areas. She said that the new zones could be established without having to actually rezone any of the properties. There are various options for completing the rezoning. It could be accomplished as part of the Zoning Ordinance update, as development projects lend themselves to rezoning, or while the City addresses any changes required as part of the High Speed Rail project.

11) Meeting of January 30, 2014

Industrial Zones: The Group discussed the Industrial Zoning Districts and whether there should be a minimum lot size for Light Industrial and Heavy Industrial to preclude an industrial use building on a small lot adjacent to residential. They also discussed the performance standards and a definition for infrequent noise and what kind of mitigation could be required to address any noise issues.

Public Use and Agricultural Zoning Districts: In response to questions from the group, Planning Manager ESPINOSA explained that there is not currently a zone for public use and the uses sometimes do not fit well in a commercial or residential zone. With a new zone of Public Use, uses such as parks or fire departments would have a specific zone applicable to the use. Currently most are zoned residential.

Special Use Zoning Districts: Ms. ESPINOSA explained that the only change to Urban Transition was to reorganize it so it was easier to understand. Regarding Planning Development zoning, the process for a revision would be streamlined.

The Group had previously discussed still requiring the Conditional Use Permit process for projects that are built sometime after the original Site Utilization Plan was adopted. Group Member ALLEY said that it sometimes takes several years to put together the financing for a project and suggested a longer period of time than the two years previously suggested. The Group felt that if the project is still consistent with the original plan then a longer period of time to proceed could be allowed with the ability to allow extensions at staff level, allowing 1-3 years more.

Glossary: The Focus Group made the following suggestions:

- Add a definition for Community Gardens;
- Add a definition for Farmers Market (distinct from Flea Market);
- Define appropriate areas for horticultural nurseries;
- Street and Sidewalk Vending definition narrowed to food vending; and,
- Consider making Bike Rentals separate from Vehicle Sales and Rentals.

Downtown Zoning Districts: The Focus Group discussed the design and setback requirements for the downtown zoning districts. The Group felt that there should be more flexibility regarding setbacks, number of windows, etc. to fit the project and location.

Urban Village Zones: Mr. THURSTON said that the Village Concept was too restrictive and that this Focus Group should see the Bellevue Corridor Community Plan before making final recommendations on the Zoning Ordinance Update. Focus Group Members GONELLA and ALLEY said that staff should proceed with a draft and Ms. ALLEY suggested a notation that it was a draft only and there would still be opportunity for review and modification later. Focus Group Member LESCH noted that without the Urban Village Zone, the only zoning alternative would be Planned Developments.

Director of Development Services GONZALVES explained that the Focus Group code review is just a step in the process and the Group should not recommend a zoning code without including all the land uses defined in the General Plan. One of the goals of the Zoning Code Update was to establish zoning districts for Business Parks, Urban Villages, etc., that are in the General Plan but not in the current code. That gives more options to developers when requesting zoning.

12) Meeting of February 20, 2014

The Focus Group discussed the twenty-one (21) questions outlined in staff’s memo dated February 7, 2014. Refer to the memo for further detail regarding the questions. The Focus Group consensus is outlined in the table below:

Question No.	MMC Section	*Page No.	Consensus
Part 3 – General Regulations			
Chapter 20.30 – Walls and Fences			
1	20.30.010(D)	89	Use “highest finished grade” to measure maximum height.
2	20.30.020(A)(2)	90	Concurred with recommendation with standards for lattice.
3	20.30-1 (Note 2 of Table) and 20-30- 020(B)(2)	90 92	Concurred with recommendation for increased height with approval process.
4	20.30.030	92	Concurred with recommended changes and specifically noted the issues around school sites.
5	20.30.040	93	Okay with razor wire by permit only.
Chapter 20.32 – Interface Regulations			
6	20.32	95	Concurred with recommendation.

Question No.	MMC Section	*Page No.	Consensus
Chapter 20.34 – Creek Buffers			
7	20.34		Concurred with recommendation with standards for landscaping creek buffer.
Chapter 20.36 – Landscaping			
8	New Chapter		Concurred with new requirements and handouts providing information regarding drought resistant and native plants.
Chapter 20.38 – Parking and Loading			
9	20.38-1	106	Concurred with recommended changes and need for a standard that is easier to measure.
10	20.38/080	121	Consensus is to model the Green Code and not require more than State requires.
Chapter 20.44 – Special Land Use Regulations			
11	20.44	131	Concurred with proposed changes except Section 20.44.020 should not be specific to Auto Wrecking Yards. It should be “wrecking establishment” so can include salvage and junk yards.
Chapter 20.48 – Home Occupations			
12	20.48	149	Concurred with recommendation.
Chapter 20.58 – Wireless Communications Facilities			
13	20.58-2	186	Concurred with recommendation.
Part 4 – Permits and Administration			
14	20.64-1	194	Concurred with recommendation.
15	20.68.020	203	Concurred with recommendation.
16	20.68.040	207	Concurred with recommendation.
17	20.68.050	209	Concurred with recommendation.
18	20.68.040	210	Concurred with recommendation.
19	20.72.030	217	Concurred with recommendation.
20	20.72.080	220	Concurred with recommendation to apply to all applications.
21	20.74.030(B)	221	Agreed should be 5 business days, excluding state and federal holidays.

13) Meeting of January 29, 2015

Request from Merced County Department of Public Health regarding Tobacco Sales: Stephanie NATHAN, Department of Public Health, reviewed their request for inclusion of special zoning restricts for tobacco sales in the Zoning Ordinance. Ms. NATHAN provided the Focus Group with the American Lung Association's Matrix of Local Ordinances Restricting Tobacco Retailers Near Schools. Ms. NATHAN responded to questions from the Focus Group.

M/S LORENZI-LESCH, and carried by unanimous voice vote (13 absent) of the Focus Group, to recommend that staff include in the Zoning Ordinance Update a ban on tobacco products, including e-cigarettes, within 1,000 feet of youth oriented areas such as schools and playgrounds (additional uses to be identified by staff). Retail businesses over 20,000 square feet would be exempt from the ban, consistent with the current code regarding alcohol sales.

Secretary's Note: In December 2014, the Focus Group received a copy of the complete Focus Group Draft of the Zoning Ordinance. Previously, the Focus Group had been reviewing draft chapters and some sections, but not the complete ordinance. From this point forward, the Focus Group was making recommendations on the Focus Group Draft and were answering questions included in a December 19, 2014, memo from City staff (and excerpted below). (Please note that references to page numbers might have changed from the Focus Group Draft to the Public Review Draft issued in September 2015.)

Chapter 20.08 – Residential Zoning (Questions #1 & #2)

- 1) *Please review carefully Table 20.08-1 on page 12 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.08.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above. (You may also want to compare the proposed Table with the existing regulations in Table A1 on page 20A.)*
- 2) *The Rural Residential (R-R) District is a new district which corresponds to a General Plan land use designation. Do the regulations for the R-R district in Section 20.08.050 on page 20 seem appropriate?*

Fraternity and Sorority Houses: The Focus Group came to the consensus that they should be allowed in an R-1 zone by Conditional Use Permit with a limit on size and number of residents.

Large Day Care and Residential Adult Care: Staff explained that the State of California regulates these facilities and doesn't give the City much discretion but that fire codes would offer some regulation.

Agriculture and Natural Resources: Group Member BRAGONIER was concerned about allowing farming in a residential zone and Ms. ESPINOSA explained that the current ordinance allows farming in Residential zones by right and by changing the code to require a Conditional Use Permit; it provides the City the ability to apply conditions and consider interface issues with the existing neighborhood.

Large Foster Homes, Nursing Homes, Convalescent Hospitals and Bed and Breakfasts (B&B): Allow in Rural Residential with Conditional Use Permit and remove the historic designation requirement for B&B's.

14) Meeting of February 12, 2015

Chapter 20.10 – Commercial Zoning (Questions #3 and #4):

- 3) *Please review carefully Table 20.10-11 on page 22 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.10.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above. (You may also want to compare the proposed Table with the existing regulations in Table B1 on page 32A.)*
- 4) *The Focus Group previously reviewed draft Guidelines for projects in the new Business Park zoning district in Section 20.10.030(E) on page 30. City staff is proposing to also apply those same B-P guidelines to regional centers outside the Downtown area in the C-C zone to allow the C-C zone to function more like the corresponding “Regional/Community Commercial” (RC) General Plan designation, instead of focusing mostly on Downtown. What does the Focus Group think of this change?*

Business Park (B-P) 20.10.010(G): Group Member ANDERSEN suggested that the term “back office” should be defined in the glossary section of the Zoning Ordinance. She believes that defining a “back office” will protect the office nature of the B-P zone and prevent a large retail business from claiming to operate as a back office. Planning Manager ESPINOSA concurred with Group Member ANDERSEN and explained that retail may be allowed in the B-P zone at a limited capacity to serve employees in the area. Staff will update the glossary to include a definition for “back office.”

Day Care Centers (Children and Adults): Group Member LORENZI was concerned that sufficient off-street parking is not provided at adult care facilities. He believes that the parking requirements should be increased to satisfy the parking needs of employees, patients/residents, and visitors. Director of Development Services GONZALVES concurred with Group Member LORENZI and explained that the parking requirements for adult care facilities could be revised to include the number of employees working during the largest shift and the square footage of the building.

Emergency Shelters: The Focus Group suggested that emergency shelters should be located in a zoning district that is highly accessible to the community. They believe that the B-P zone lacks accessibility and that it is not an appropriate zoning designation for emergency shelters. The Focus Group came to the consensus that a more appropriate zoning district is the C-T zone (with Conditional Use Permit approval).

Hospitals: The Focus Group came to the consensus that there needs to be a clear distinction between hospitals and surgery centers. They believe that surgery centers should be a separate category and that they should be allowed in the C-N zone (with Conditional Use Permit approval).

Alcoholic Beverage Sales: The Focus Group came to the consensus that bars and nightclubs should be permitted in the B-P zone as an accessory use to a primary use (e.g. hotel or a restaurant), with a Conditional Use Permit.

Planning Manager ESPINOSA noted that Alcoholic Beverage Sales will be subject to the special provisions outlined in Section 20.44.010 (Alcoholic Beverage Sales for Off-Premises Consumption). The reference to these additional regulations will be added to Table 20.10-1.

Bed and Breakfast: Planning Manager ESPINOSA noted that Bed and Breakfast establishments will be subject to the special provisions outlined in Section 20.44.030 (Bed and Breakfast). The reference to these additional regulations will be added to Table 20.10-1, and based on the Focus Group's previous recommendation, the requirement for historic designation will be removed.

Check Cashing/Payday Loan Establishments: The Focus Group came to the consensus that the definition for a check cashing establishment should be broadened to include payday loan establishments.

Multi-Screen (6 or more) Movie Theaters: The Focus Group came to the consensus that multi-screen (6 or more) movie theaters should be permitted with Conditional Use Permit approval in both the C-N zone and the C-T zone in addition to the C-C Zone, which is the only zone where these are currently allowed.

Farmers Market: The Focus Group came to the consensus that farmers markets should also be permitted in the C-O zone with Conditional Use Permit approval.

Flea Market: The Focus Group came to the consensus that a Flea Market should not be permitted in the B-P zone due to land-use incompatibility reasons.

Gas and Service Stations/Car Washes: The Focus Group came to the consensus that gas and services stations should be permitted in the C-SC zone (with Conditional Use Permit approval), but only in association with a grocery store.

Restaurants: Planning Manager ESPINOSA announced that restaurants within the B-P zone will be subject to Note #12 and Note #13, as shown on page 25 of the Draft Zoning Ordinance. This reference will be added to Table 20.10-1.

Vehicle Sales: The Focus Group came to the consensus that vehicle sales should be located in the C-C zone, but not within the City Center area (Note #10 to be added to Table 20.10-1 in the C-C zone).

Airports and Heliports: The Focus Group came to the consensus that the zoning districts for heliports should correspond to that of hospitals as a hospital may want to use a heliport for emergency/service purposes.

Mobile Food Vendors: The Focus Group came to the consensus that non-food mobile vendors (e.g. mobile dog grooming vendors, etc.) should be considered as a separate category from mobile food vendors and that zoning regulations should be established for them.

Primary Building Standards (Stories): The Focus Group came to the consensus that there should not be a restriction on the maximum number of stories that a building is permitted. However, building height restrictions should remain as shown on Table 30.10-2, Development Standards for Commercial Zones.

15) Meeting of February 26, 2015

Chapter 20.12—Industrial Zoning Districts

- 5) *Please review carefully Table 20.12-11 on page 33 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.12.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above. (You may also want to compare the proposed Table with the existing regulations in Table C1 on page 40A.)*

Chapter 20.14—Downtown Zoning Districts

- 6) *Does the Focus Group think the creation of these 3 new Downtown zoning districts to better reflect the unique characteristics of different Downtown commercial areas is worthwhile or should the City continue to just use the current C-C zone?*
- 7) *Please review carefully Table 20.14-11 on page 42 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone*

described in Section 20.14.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above.

- 8) *Are the new development standards in Section 20.14.030 on page 45 appropriate or too restrictive?*

Purpose of the Industrial Zoning Districts 20.12.010 (A) and (B): Group Member BRAGONIER was concerned that parcels of any size could be rezoned to industrial and produce spot zoning adjacent to residential properties. To prevent this from happening, she suggested that a minimum zoning district size be established for the I-L and I-H zones. The Focus Group came to the consensus that there should be a 5-acre minimum zone size for the I-L zone and a 10-acre minimum zone size for the I-H zone (applies only for newly established industrial zones).

Recycling Collection Facilities, Small: Economic Development Director QUINTERO noted that small recycling collection facilities tend to generate high volumes of traffic. He explained that this results in slower traffic patterns that make it difficult for other industrial businesses to operate. The Focus Group came to the consensus that small recycling collection facilities should not be allowed in the I-H zone.

Recycling Collection Facilities, Large and Recycling Processing Facilities: The Focus Group came to the consensus that large recycling collection facilities and recycling processing facilities should be allowed in the I-H zone with a Site Plan Review Permit.

Warehousing, Wholesaling and Distribution: The Focus Group came to the consensus that warehousing, wholesaling and distributions should be permitted in the I-H zone with a Site Plan Review Permit. In addition, they recommended that Note #3 (page 35) be modified so that a Site Plan Review Permit is required for businesses that would like to dedicate more than 10% of their total building floor area to retail space.

Development Standards for Industrial Zoning Districts 20.12.030 (Note #3): Director of Development Services GONZALVES explained that some industrial uses require tall buildings/structures to operate. He noted that in the past, the I-L and I-H zones contained height restrictions to address fire concerns. However, since then, there have been several advancements in fire prevention technology and fire suppression technology (e.g. fire sprinkler systems) that satisfy fire codes/concerns without limiting the height of a structure.

Planning Manager ESPINOSA was concerned about the visual impacts that tall industrial structures could have on nearby residential properties. However, she explained that in these situations, a Conditional Use Permit (CUP) would be

required (CUP triggered by development on an Interface Overlay Zone). Said permit would contain conditions of approval reducing the impact that an industrial development could have on nearby residential properties, including a condition limiting the maximum height of a structure.

Associate Planner NELSON explained that the development standards in the industrial zones should be consistent with that of the Merced County Airport Land Use Compatibility Plan. Doing so would prevent flight paths from being disrupted by tall industrial structures.

The Focus Group came to the consensus that structures in the industrial zones should not be limited to a maximum height or a maximum number of stories as long as they satisfy fire and building codes (thus, eliminating Note #3 on page 36 and the height limits in Table 20.12-2). However, when adjacent to residential zones, industrial development should require Conditional Use Permit approval with conditions restricting the maximum height of a structure. In addition, language should be added to Section 20.12.010 - *Purpose of the Industrial Zoning Districts*, requiring that development is compatible with the development standards set forth in the Merced County Airport Land Use Compatibility Plan.

Zoning District Note #6(B): Group Member PALOUTZIAN suggested that Note #6(B) be modified as shown below, for clarity purposes (underline indicates added language):

“6B. Prohibited Uses. The manufacturing of the following uses are prohibited unless the Planning Commission determines otherwise...”

Check Cashing/Payday Loan Establishments: The Focus Group came to the consensus that check cashing/payday loan establishments should not be allowed in the D-COR zone or in the City Center area (as defined in Note #4 on page 44).

Gas and Service Stations: Planning Manager ESPINOSA noted that gas and service stations will be subject to the special provisions outlined in Section 20.44.070. The reference to these additional regulations will be added to Table 20.14-1.

Retail, with Alcohol Sales (Less than 20,000 Square Feet in Building Size) and Retail, with Alcohol Sales (More than 20,000 Square Feet in Building Size): Planning Manager ESPINOSA noted that alcoholic beverage sales will be subject to the special provisions outlined in Section 20.44.010. The reference to these additional regulations will be added to Table 20.14-1.

Vehicle Sales: The Focus Group came to the consensus that vehicle sales should be permitted in the D-COR zone with Conditional Use Permit approval, but that large car lots should be discouraged in the Downtown core with only small showrooms being allowed.

Downtown Development Standards: The Focus Group was concerned that the downtown development standards may be too restrictive especially for the areas outside of the D-COR zone. They came to the consensus that additional leeway should be given to the driveway permitting process (page 47) and to the street-level building design guidelines (pages 48-50).

16) Meeting of March 12, 2015

The Focus Group continued their review and comments on the questions outlined by Staff in the December 19, 2014, memo.

Urban Village Zoning Districts (Chapter 20.16)

- 9) *These 3 new Urban Village zoning districts have been created to correspond to the Urban Village designations in the City's General Plan and would offer additional zoning options for developers to choose (if they wish) instead of Planned Developments in newly annexed areas. Does the Focus Group believe these new zoning districts are necessary?*
- 10) *Please review carefully Table 20.16-11 on page 53 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.16.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above.*
- 11) *Are the new development standards in Section 20.16.030 on page 55 appropriate or too restrictive? (Please note that these draft standards have been substantially modified since the previous draft to be more flexible.)*

Question #9: The Group Members unanimously agreed that the three new Urban Village zoning districts were an appropriate option or tool for staff and developers.

Question #10: The Group Members also concurred with staff recommendations on the Land Use Table (Page 53).

Question #11: Planning Manager ESPINOSA explained that staff may make some adjustments to the height restrictions, such as allowing 35-40 feet in the Outer Village Residential areas. Group Member MAXWELL suggested eliminating the height restriction in the Inner Village Residential area.

Public Use and Agricultural Zoning Districts (Chapter 20.18)

- 12) *This chapter contains 2 new zoning districts, Parks and Open Space (P-OS) and Public Facility (P-F), along with the existing Public Parking (P-PK) zone and a modified Agricultural (A-G) zone which replaces the current A-T-5 and A-I-20. Are these new P-*

OS and P-F zones worthwhile additions or will they have limited use due to the small number of uses allowed in each?

- 13) *Please review carefully Table 20.18-11 on page 60 and think about whether the listed land uses are appropriate for those zones (keeping in mind the purpose of each zone described in Section 20.18.010) and whether the City review process proposed is appropriate, keeping in mind the descriptions of those procedures above.*

Question #12: Following a brief discussion regarding Public Use and Agricultural Zoning districts, Group Members concurred with staff and recommended no change.

Question #13: The consensus of the Group Members was that there would be no changes to Table 20.18-1 (Page 60) except to height restrictions so they are consistent throughout the Zoning Code.

Special Use Zoning Districts (Chapter 20.20)

- 14) *The “Summary of Major Changes” notes several changes to the Planned Development requirements, starting on page 66, to make it more flexible and easier for developers to use. Does the Focus Group agree with those changes?*

Question #14: The Focus Group agreed that the changes proposed to the Planned Development requirements (Page 66) would allow more flexibility and recommended no further changes.

Overlay Zones (Chapter 20.22)

- 15) *What does the Focus Group think of the new Urban Residential (/UR) overlay zone, starting on page 74? Will it encourage the use of different housing types not typically found in Merced?*

Question #15: Planning Manager ESPINOSA explained that the Airport Overlay Zone is currently used in practice but this would add it to the Zoning Code. She also explained that it would provide a placeholder for the High Speed Rail. Group Member COX suggested that it shouldn't be limited to High Speed Rail and should just refer to “Rail” in general since in the future, there will be other types of rail systems (light rail, etc.).

Walls and Fences (Chapter 20.30)

- 16) *Section 20.30.020(A)(2) on page 98 would allow the addition of 2 feet of lattice on residential fences and Note 2 of Table 20.30-1 on page 98 would allow the maximum height of residential fences to be increased from 6 feet to 8 feet with the approval of a Minor Use Permit. Proposed procedures, including notifications for neighbors, for Minor Use Permits for Fences are described in Section 20.30.020(C) on page 102. City staff is a bit concerned over how many requests of this nature might be received and its impacts on both neighborhoods and staff workload. What does the Focus Group think of this change?*

- 17) *After the last Focus Group review, staff changed Section 20.30.040 on page 104 to allow barbed wire fences in residential zones, razor wire fences in all zones, and electric fences in only non-residential zones, all with a Minor Use Permit. Does the Focus Group agree with these changes?*

Question #16: The consensus of the Group Members was to remove the procedures for allowing higher than 6-foot fences in residential zones and simply allow fence height in Residential Zones to be seven (7) feet. Anything higher would have a negative visual impact and may cause concern for emergency responders. Eight (8) feet for multi-family should be allowed, however.

Question #17: The Focus Group agreed to the changes to Section 20.30.040 (Page 104) to allow barbed wire fences in residential zones, razor wire fences in all zones, and electric fences in only non-residential zones, all with a Minor Use Permit.

Parking and Loading (Chapter 20.38)

- 18) *Table 20.38-1 (starting on page 120) proposes quite a few changes to the City's current parking requirements for various land uses. A comparison to the current ordinance can be found in Table D1 starting on page 140A. Please review the proposed changes and give comments.*
- 19) *Section 20.38.080 (starting on page 135) includes NEW requirements for bicycle parking based on previous recommendations from the Bicycle Advisory Commission. At your last review, the Focus Group noted that while they supported bike parking requirements, they should be no more restrictive than what the Green Building Code requires, which is generally what is included in the Draft.*

At its December 9, 2014 meeting, the Bicycle Advisory Committee reviewed the Bike Parking portion of the Draft, and offered the following recommended changes. Does the Focus Group support these new recommended changes?

Excerpts from Draft Bicycle Advisory Commission minutes for December 9, 2014:

“Regarding the “Applicability” section, the Commission noted that: bicycle travel to the proposed exempted uses should be expected, especially by employees; and, the section creates a loop-hole for additional uses to seek exceptions to the bike parking code.

ON MOTION FROM COMMISSIONER KAYSER-GRANT, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO DELETE ALL PROPOSED LANGUAGE THAT SPECIFIES EXCEPTIONS TO APPLICABILITY, AS PRESENTED IN “SECTION 20.38.80. H. APPLICABILITY.”

Regarding the “Bicycle Parking Spaces Required” section for residential uses, the Commission noted that: current single-family home, duplex, and triplex designs will likely provide adequate bicycle parking spaces; basing the need for bike parking to the number of vehicle spaces is flawed and conflicts with the City's efforts to expand bicycle travel as a viable form of transportation; 1 long-term bicycle space per 10 dwelling units

is unrealistically low; that multi-family residents tend to rely more on alternative modes of transportation for commuting purposes and need to have bike spaces provided in the project design; and, inclusion of bike parking spaces on residential properties adds versatility and value and does not diminish other site amenities.

ON MOTION FROM COMMISSIONER KAYSER-GRANT, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO MODIFY TABLE 20.38-4 (REQUIRED PARKING SPACES) BY CHANGING THE SHORT-TERM AND LONG-TERM SPACES FOR RESIDENTIAL USES TO: 1 SHORT-TERM BIKE SPACE PER 4 UNITS AND 1 LONG-TERM BIKE SPACE PER UNIT.”

Question #18: The Focus Group concurred with the changes proposed to Table 20.38-1 (Page 120) regarding parking requirements for various land uses.

Question #19: The Focus Group discussed the recommendation of the Bicycle Advisory Commission and concurred that bicycle parking should mirror the State Green Code requirements and that the market would dictate the need for additional long term bike spaces without requiring it in the Zoning Code.

M/S MAXWELL-COX, and carried by unanimous voice vote of the Focus Group (14 absent), to recommend that the bicycle parking requirements in all zoning districts be the same as required by the State of California and not be any greater.

17) Meeting of March 26, 2015

Chapter 20.40—Small Lot Single Family Homes

20) *This is a NEW chapter based on the Small Lot Design Guidelines adopted by the City in 2008. Currently, such small lot designs can only occur in Residential Planned Developments. This chapter would also allow them to be approved with a CUP in the R-2, R-IV, and R-OV zones. Does the Focus Group agree with this change? Are there other zones where this should be considered?*

Question #20: The Focus Group concurred with the changes and did not have any suggestions for other zones to apply these standards.

Chapter 20.44—Special Land Use Regulations

21) *Chapter 20.44 (starting on page 149) proposes special regulations for several new land uses not addressed in the current ordinance. At their last review, the Focus Group noted agreement with the additions. Since that review, staff has determined that such regulations are also needed for food trucks that park in fixed locations and emergency shelters. What does the Focus Group think of the proposed regulations for the following:*

- a. *Section 20.44.020—Food Trucks in Fixed Locations (starting on page 150)? Keep in mind that food trucks have become increasingly popular and are increasingly competing with “bricks and mortar” restaurants. Also, with internet advertising*

allowing such trucks to locate in multiple locations over the course of a week, the need for clear regulations on where these trucks can locate and what review process is to be followed is critical.

- b. Section 20.44.150—Emergency Shelters (starting on page 164)? Recent changes in State law require the City to not only allow emergency shelters as a permitted use in at least one zone but to set forth development standards for such uses as well.*

Question #21a & b: The Focus Group concurred with the draft ordinance as written and made the following recommendation:

M/S LESCH-BRAGIONIER, and carried by unanimous vote of the Focus Group (12 absent, 2 abstain*), to support the language as written.

Part 4—Permits and Administration

- 22) *Section 20.68.020 (starting on page 235) outlines the process for a new type of permit—the Minor Use Permit. Please review and recommend any changes.*
- 23) *Section 20.68.040 (starting on page 241) outlines the process for a new type of permit—Minor Modifications. Please review and recommend any changes.*
- 24) *Section 20.68.050 (starting on page 242) outlines the process for Site Plan Reviews, which is an existing process that applies only in industrial areas, but one that will be expanded for use in many more situations in the DRAFT. Please review and recommend any changes.*
- 25) *Section 20.68.040 (starting on page 244) outlines the process for a new type of permit—Special Project Permits. Please review and recommend any changes.*

Questions #22 through #25: The Focus Group concurred with the draft ordinance as written.

Final Recommendation on Zoning Ordinance

M/S LESCH-GONELLA, and carried by unanimous vote of the Focus Group members present (12 absent, 2 abstain*), to support City staff in moving forward with a Public Review Draft of the Zoning Ordinance as written with the changes as recommended by the Focus Group over the last few meetings.

*Mayor Thurston and Council Member Dossetti abstained from the vote since the City Council would be making the final decision on adopting the Zoning Ordinance at a later date.

Merced Bicycle Advisory Committee Minute Excerpts re: Bike Parking

Meeting of December 11, 2012

DRAFT BICYCLE PARKING ORDINANCE

Principal Planner KING presented the staff report for this item.

Questions from the Commissioners were answered regarding shelter requirements, enforcing existing uses, rack space calculation methods and percentages, and comparisons to the CalGreen Code requirements. Stressing the need for the new ordinance to be focused and detailed, Chairperson GUZZETTA suggested forming a subcommittee of himself and another member to help formulate a recommendation. Commissioner NOBLE volunteered to help.

ON MOTION OF COMMISSIONER KAYSER-GRANT, SECONDED BY COMMISSIONER TYLER, DULY CARRIED BY UNANIMOUS VOICE VOTE, TO DEFER RECOMMENDATION ON THE NEW BICYCLE PARKING ORDINANCE TO THE FEBRUARY 2013 MEETING AND FORM A SUBCOMMITTEE TO INCLUDE CHAIRPERSON GUZZETTA AND COMMISSIONER NOBLE TO DEVELOP A RECOMMENDATION TO PRESENT AT THAT MEETING.

Meeting of March 26, 2013

SECOND REVIEW – DRAFT BICYCLE PARKING ORDINANCE

Chairperson GUZZETTA reviewed the changes that the subcommittee of he and Commissioner NOBLE had made. Using the Bicycle Parking Guidelines from the 2008 Bike Plan, the subcommittee recommended keeping the guideline document's recommended 10% for commercial bike parking spaces and increasing the number of spaces for public buildings to 20%. The subcommittee also commented on the *Merced Vision 2030 General Plan* bike parking policies. Staff advised that no changes are being made to the General Plan policies; however, the changes suggested can be used towards the Bicycle Parking Ordinance Code being drafted.

A motion by Commissioner TYLER, seconded by Commissioner NOBLE, was made to accept the changes made by the subcommittee to the Bicycle Parking Guidelines. Before the vote was finalized, Planning Technician NUTT asked for

clarification of the motion. Realizing a conflict between the draft ordinance and the bike parking guidelines, the Commission abandoned the current vote in favor of further discussion.

For non-residential developments, the Commission agreed that a percentage of 8% of vehicle spaces required would ensure a compromise between the CalGreen Code and the City's established guidelines. The Commissioners also agreed to include requirements addressing public buildings and parks, so those areas are assured enough parking.

ON MOTION OF COMMISSIONER MIDDLEBROOKS, SECONDED BY COMMISSIONER NOBLE, ONE ABSENT, DULY CARRIED BY UNANIMOUS VOICE VOTE, TO ACCEPT THE DRAFT ORDINANCE FOR RESIDENTIAL USES AS RECOMMENDED BY STAFF; TO ACCEPT THE REQUIREMENTS FOR NON- RESIDENTIAL USES AS RECOMMENDED BY STAFF, EXCEPT TO CHANGE THE RECOMMENDED PERCENTAGE REQUIREMENTS FOR: SHORT-TERM BICYCLE PARKING, FROM FIVE PERCENT (5%) TO EIGHT PERCENT (8%), AND LONG-TERM BICYCLE PARKING, FROM FIVE PERCENT (5%) TO EIGHT PERCENT (8%); AND TO INSERT REQUIREMENTS THAT ADDRESS BICYCLE PARKING IN PUBLIC PLACES AND BUILDINGS TO PROVIDE BICYCLE SPACES NUMBERING TWENTY (20) PERCENT OF VEHICLE PARKING NORMALLY REQUIRED, OR IMMEDIATELY AVAILABLE IN THE FACILITY FOR PUBLIC FACILITIES SUCH AS MUNICIPAL OFFICES, PARKS, SWIMMING POOLS, AUDITORIUMS, CHURCHES, AND SIMILAR USES, AS FOLLOWS:

AYES: COMMISSIONERS KAYSER-GRANT, MIDDLEBROOKS, COMEYNE, TYLER, NOBLE, AND CHAIRPERSON GUZZETTA
NOES: NONE
ABSTAIN: NONE
ABSENT: SIMS-CULOT

Meeting of December 9, 2014

DRAFT BICYCLE PARKING CODE

Principal Planner KING presented the report on the draft changes to the parking section of the City's zoning ordinance and invited comments and recommendations. Commissioners KAYSER-GRANT and HOTHEM expressed their appreciation to the Planning Staff for changing earlier drafts based on their input, notably in regards to the draft standards for short-term and long-term bicycle parking. The Commission then discussed the "Applicability" and "Bicycle Parking Spaces Required" sections, and made the following recommendations to Staff.

Regarding the "Applicability" section, the Commission noted that: bicycle travel to the proposed exempted uses should be expected, especially by employees; and, the section creates a loop-hole for additional uses to seek exceptions to the bike parking code.

ON MOTION FROM COMMISSIONER KAYSER-GRANT, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO DELETE ALL PROPOSED LANGUAGE THAT SPECIFIES EXCEPTIONS TO APPLICABILITY, AS PRESENTED IN "SECTION 20.38.80. H. APPLICABILITY."

Regarding the "Bicycle Parking Spaces Required" section for residential uses, the Commission noted that: current single-family home, duplex, and triplex designs will likely provide adequate bicycle parking spaces; basing the need for bike parking to the number of vehicle spaces is flawed and conflicts with the City's efforts to expand bicycle travel as a viable form of transportation; 1 long-term bicycle space per 10 dwelling units is unrealistically low; that multi-family residents tend to rely more on alternative modes of transportation for commuting purposes and need to have bike spaces provided in the project design; and, inclusion of bike parking spaces on residential properties adds versatility and value and does not diminish other site amenities.

ON MOTION FROM COMMISSIONER KAYSER-GRANT, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO MODIFY TABLE 20.38-4 (REQUIRED PARKING SPACES) BY CHANGING THE SHORT-TERM AND LONG-TERM SPACES FOR RESIDENTIAL USES TO: 1 SHORT-TERM BIKE SPACE PER 4 UNITS AND 1 LONG-TERM BIKE SPACE PER UNIT.



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item D.1.

Meeting Date: 12/21/2015

SUBJECT: PUBLIC EMPLOYEE APPOINTMENT - Title: City Manager; Authority: Government Code Section 54957



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.1.

Meeting Date: 12/7/2015

SUBJECT: Information Only Contracts

ATTACHMENTS

1. Information Only Contracts Table

Exhibit 1 – Table of Contracts

12/7/2015 City Council Meeting

Department/Division	Vendor	Purpose/Location	Amount
0201 – City Manager	GVP Ventures, Inc. (DBA: Bob Murray & Associates)	Consultant to Provide Executive Search & Recruitment for City Attorney Position.	\$ 6,900.00
1201 – Recreation & Parks	Merced Area Sports Officials, Inc. (Marvin Smith)	Officiation of Youth and Adult Basketball Sporting Activities (January 1, 2016 through June 30, 2016).	\$10,638.00
1201 – Recreation & Parks	Fernando Acosta	Leisure Class Agreement to Conduct Merced Youth Soccer Programs (last event is scheduled for June 30, 2016).	\$23,625.00
0701 – Finance	Seevers Jordan Ziegenmeyer	Professional Services Agreement for Refinancing of CFD's 2003-1 (Bellevue Ranch East) & 2005-1 (Bellevue Ranch West) - \$12,500 for each, or \$20,000 for both concurrently.	\$25,000.00

Copies of all of the contracts listed above are available in the City Clerk's Office.



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.2.

Meeting Date: 12/7/2015

Report Prepared by: *Vicci Lane, Secretary III, Planning Division*

SUBJECT: Information Only-Planning Commission Minutes of September 9, September 23, and October 21, 2015

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, September 9, 2015

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Kurt Smoot, Bill Baker, Robert Dylina, Peter Padilla and Chairperson Travis Colby

Commissioners Absent: Kevin Smith (unexcused), (one vacancy)

Staff Present: Planning Manager Espinosa, Senior Deputy City Attorney Rozell, and Recording Secretary Lane

1. **APPROVAL OF AGENDA**

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

2. **MINUTES**

M/S SMOOT-BAKER, and carried by unanimous voice vote (one absent, one vacancy), to approve the Minutes of August 19, 2015, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 Overview of the Public Review Draft of New Merced Zoning Ordinance, initiated by the City of Merced, to give the Planning Commission an overview of the recently-released Public

Review Draft of the Zoning Ordinance, which is a comprehensive update of Title 20 of the Merced Municipal Code.

Planning Manager ESPINOSA reviewed the report on this item. She introduced 3 members of the Zoning Ordinance Update Focus Group (Chairperson Bruce Logue, Kenra Bragonier, and Carole McCoy) who were present. For further information, refer to Staff Report #15-17.

5. **INFORMATION ITEMS**

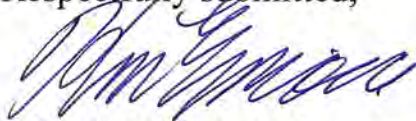
5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next Planning Commission meeting and noted that the City Council desired a joint study session with them on the new Zoning Ordinance (date to be set by City Council). The Planning Commission discussed dates for their study session on the Zoning Code; October 21 was the preferred date.

6. **ADJOURNMENT**

There being no further business, Chairperson COLBY adjourned the meeting at 7:40 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson
Merced City Planning Commission

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, September 23, 2015

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Kurt Smoot, Kevin Smith, Bill Baker, Robert Dylina, Peter Padilla and Chairperson Travis Colby

Commissioners Absent: None (one vacancy)

Staff Present: Planning Manager Espinosa, Planner Mendoza-Gonzalez, Senior Deputy City Attorney Rozell, and Recording Secretary Lane

1. **APPROVAL OF AGENDA**

M/S DYLINA-SMOOT, and carried by unanimous voice vote (one vacancy), to approve the Agenda as submitted.

2. **MINUTES**

M/S SMITH-PADILLA, and carried by unanimous voice vote (one vacancy), to approve the Minutes of September 9, 2015, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1204, initiated by Amie Marchini, property owner. This application involves a request to construct an approximately 5,000-square-foot office building and to allow for a future 20,000-square-foot assisted living facility, with a maximum of thirty-six beds, as an expansion of the Mission Gardens residential care facility at 1450 E. 27th Street, generally located on the south side of E. 27th Street, approximately 150 feet west of Green Street, within a Low Density Residential (R-1-6) zone.

Planner MENDOZA-GONZALEZ reviewed the report on this item. He noted a memo from staff (which was provided to the Commission prior to the meeting) recommending a modification to Condition #20 to ensure that the future assisted living facility is compatible with the surrounding neighborhood. For further information, refer to Staff Report #15-18.

Public testimony was opened at 7:19 p.m.

Speaker from the Audience in Favor:

AMIE MARCHINI, the applicant, Atwater

No one spoke in opposition to the project.

Public testimony was completed at 7:22 p.m.

The Commission discussed various aspects of the project, including the time frame with regard to the level of approval (Site Plan approval versus Conditional Use Permit). They agreed that 10 years was a more appropriate time frame rather than the proposed 15 years.

M/S COLBY-BAKER, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-23, and approve Conditional Use Permit #1204, subject to the Findings and

twenty-seven (27) Conditions set forth in Staff Report #15-18, amending Condition #20 as follows (RESOLUTION #3055):
(Note: ~~Strikethrough~~ deleted language, underline added language.)

“20. If constructed within ten years of this approval, the applicant shall obtain Site Plan Review approval prior to submitting building permit applications to construct the 20,000-square-foot assisted living facility. Site Plan Review approval shall allow a maximum of thirty-six beds. Additional parking shall be required at time of building construction. After ten years of approval, a Conditional Use Permit shall be required.”

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

NOES: None

ABSENT: None (one vacancy)

ABSTAIN: None

4.2 Cancellation of October 7, 2015, Planning Commission Meeting due to Lack of Items

M/S BAKER-SMOOT, and carried unanimous voice vote (one vacancy), to cancel the Planning Commission meeting of October 7, 2015.

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings and noted that the Planning Commission would have their study session on the new Zoning Ordinance on October 21, 2015.

6. **ADJOURNMENT**

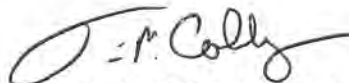
There being no further business, Chairperson COLBY adjourned the meeting at 7:39 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson
Merced City Planning Commission

CITY OF MERCED
Planning Commission

Resolution #3055

WHEREAS, the Merced City Planning Commission at its regular meeting of September 23, 2015, held a public hearing and considered **Conditional Use Permit #1204**, initiated by Amie Marchini, property owner. This application involves a request to construct an approximately 5,000-square-foot office building and to allow for a future 20,000-square-foot assisted living facility, with a maximum of thirty-six beds, as an expansion of the Mission Gardens residential care facility at 1450 E. 27th Street, generally located on the south side of E. 27th Street, approximately 150 feet west of Green Street, within a Low Density Residential (R-1-6) zone; also known as Assessor's Parcel No. 033-120-029; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through J of Staff Report #15-18; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #15-23, and approve Conditional Use Permit #1204, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

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

NOES: None

ABSENT: None (one vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #3055

Page 2

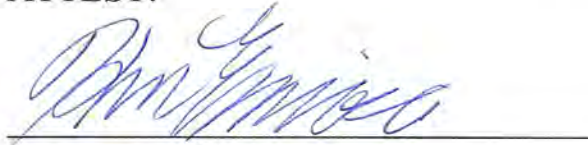
September 23, 2015

Adopted this 23rd day of September 2015



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:\shared\planning\PC Resolutions\CUP#1204 Marchini Mission Gardens

Conditions of Approval
Planning Commission Resolution #3055
Conditional Use Permit #1204

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibit 2 (landscape plan), and Exhibit 3 (elevations) -- Attachments B, C, and D of Staff Report #15-18, 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, including the Post Construction Standards for Storm Water that became effective July 1, 2015.
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. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
8. The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and state regulations.
9. Bicycle racks shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces. The style of rack shall be consistent with the recommendations of the City's most recently adopted Bike Plan.
10. Any missing or damaged improvements along the property frontage shall be installed/repaired to meet City Standards. Any improvements that don't meet current City Standards shall be replaced to meet all applicable standards.
11. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
12. The applicant shall work with the City's Refuse Department to determine the proper location for a trash enclosure and if a recycling container will be required to comply with AB 341. If it is required, the container shall be enclosed within a refuse enclosure built to City Standards.
13. Signage shall be reviewed and approved with an Administrative Conditional Use Permit. Signage facing residential properties shall be non-illuminated.
14. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees of the business.

15. All parking lot and building lighting shall be shielded or oriented in a way that does not allow “spill-over” onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
16. All mechanical equipment shall be screened from public view.
17. All landscaping in the public right-of-way shall comply with State Water Resources Control Board Resolution No. 2015-0032 “To Adopt an Emergency Regulation for Statewide Urban Water Conservation” and the City’s Water Conservation Ordinance (Merced Municipal Code Section 15.42). Xeriscape or artificial turf shall be used in place of natural sod or other living ground cover. If turf is proposed to be installed in park-strips or on-site, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees, parking lot trees, or other landscaping shall be provided with a drip irrigation or micro-spray system.
18. All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.
19. Detailed landscape plans, including irrigation plans, shall be submitted at the building permit stage.
20. If constructed within ten years of this approval, the applicant shall obtain Site Plan Review approval prior to submitting building permit applications to construct the 20,000-square-foot assisted living facility. Site Plan Review approval shall allow a maximum of thirty-six beds. Additional parking shall be required at time of building construction. After ten years of approval, a Conditional Use Permit shall be required.
21. A six-foot-tall concrete block fence shall be constructed on the portions of the eastern property line between the parking lot and the adjacent residential uses per MMC 20.58.450.A.2.
22. The premises shall remain clean and free of debris and graffiti at all times.
23. It is recommended that the exterior building walls be treated with an anti-graffiti coating to make graffiti removal easier. In any case, graffiti removal shall take place within 24 hours of appearing and shall

be painted over with a paint color that matches the existing color of the building wall.

24. A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
25. The building's exterior color scheme shall match or complement the colors of the existing residential care facility. Color samples shall be reviewed and approved by planning staff during the building permit stage.
26. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, installing traffic calming measures, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
27. The parking lot layout shall comply with all applicable City Standards. Parking lot trees shall be provided at a ratio of one tree for every six parking spaces. These trees shall be installed per the City's Parking Lot Landscape Standards, shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list).

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, October 21, 2015

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Kevin Smith, Bill Baker, Peter Padilla, and Chairperson Travis Colby

Commissioners Absent: Kurt Smoot and Robert Dylina (both excused, one vacancy)

Staff Present: Planning Manager Espinosa, Senior Deputy City Attorney Rozell, and Recording Secretary Lane

1. **APPROVAL OF AGENDA**

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

2. **MINUTES**

M/S PADILLA-BAKER, and carried by unanimous voice vote (two absent, one vacancy), to approve the Minutes of September 23, 2015, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Vacation #15-01, initiated by Raymond and Rebecca Abarca, property owners, to abandon a 10-foot-wide Public Utilities Easement (PUE) located along the eastern property line of the property located at 2936 Crestwood Court.

As a Consent item, there was no staff presentation. For further information, refer to Staff Report #15-19.

M/S COLBY-SMITH, and carried by the following vote, to adopt a Finding that the proposed vacation is consistent with the *Merced Vision 2030 General Plan*.

AYES: Commissioners Smith, Baker, Padilla, and Chairperson Colby

NOES: None

ABSENT: Commissioners Smoot and Dylina (one vacancy)

ABSTAIN: None

- 4.2 Study Session on Public Review Draft of the New Merced Zoning Ordinance, initiated by the City of Merced, to give the Planning Commission an opportunity to discuss the recently-released Public Review Draft of the Zoning Ordinance, which is a comprehensive update of Title 20 of the Merced Municipal Code.

Planning Manager ESPINOSA reviewed the report on this item. For further information, refer to Staff Report #15-17 - Addendum.

The Commission discussed various aspects of the new Zoning Ordinance including its flexibility, parking requirements, student housing, multi-family dwellings, density bonuses, and building heights.

5. **INFORMATION ITEMS**

5.1 **Calendar of Meetings/Events**

Planning Manager ESPINOSA announced that the City Council had set the Joint City Council/Planning Commission Study Session on the Public Review Draft of the new Zoning Ordinance for December 7, 2015, at 5:30 p.m. Chairperson COLBY and Commissioner SMITH expressed their regret that they both would most likely not be able to attend. Ms. ESPINOSA also noted that the City Council had appointed a new Planning Commissioner and briefed the Planning Commission on items for the next few Planning Commission meetings.

6. **ADJOURNMENT**

There being no further business, Chairperson COLBY adjourned the meeting at 8:23 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson
Merced City Planning Commission



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.3.

Meeting Date: 12/7/2015

Report Prepared by: *Maria Mendoza, Development Associate, Economic Development*

SUBJECT: Economic Development Advisory Committee Minutes of August 25, 2015.

ATTACHMENTS

Economic Development Advisory Committee Minutes of August 25, 2015.

**CITY OF MERCED
Economic Development Advisory Committee**

MINUTES

Third Floor Conference Room
Tuesday, August 25, 2015

Chairperson Vanessa LARA called the meeting to order at 7:05 a.m.

ROLL CALL

Commissioners Present: Mary Camper, Christie Hendricks, Vanessa Lara, Paul Lundberg, Joe Ramirez and John Sundgren.

Commissioners Absent: Doug Fluetsch (excused) Steve Roussos (excused) (three vacancies).

Staff Present: City Manager John Bramble, Director of Economic Development Frank Quintero, Development Associate, Maria Mendoza and Development Associate Karen Baker

Others Present: Gonella Realty Coldwell Banker Realtor, Dan Gallagher

1. **MINUTES**

M/S RAMIREZ/HENDRICKS, and carried by unanimous voice vote (three vacancies) to approve the Minutes of July 28, 2015, as submitted.

2. **COMMUNICATIONS**

None.

3. **DIRECTOR'S REPORT**

Director of Economic Development Frank QUINTERO stated that application had been made for 70+ acres off of Mission Avenue for commercial use. A proposed mitigated negative declaration is in process and was expected to take between 6-9 months.

4. **ITEMS**

4.1 **Introduction to the Merced Gateway Retail Center**

Director of Economic Development Frank QUINTERO reviewed the history of the project since its beginnings in 2008. Commercial Broker, Dan GALLAGHER went into detail about the floating design aspect that would be driven by the retailers.

4.2 Merced Market Project Potential

Director of Economic Development Frank QUINTERO and Commercial Broker, Dan GALLAGHER gave the Committee an overview of projects on the horizon for Merced. Those projects included the G St. and Yosemite Ave. project, the proposed M St. and Bellevue Apartments, the Cardella Rd and M St. project and the infill at the former Carrow's site.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

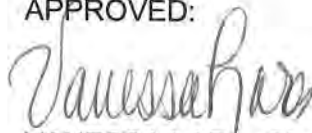
There being no further business, Chairperson Vanessa LARA adjourned the meeting at 8:10 a.m.

Respectfully Submitted



MARIA MENDOZA, Secretary
Economic Development Advisory Committee

APPROVED:



VANESSA LARA, Chairperson
Economic Development Advisory Committee



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.4.

Meeting Date: 12/7/2015

SUBJECT: Information Only - Traffic Committee Minutes of September 8, 2015

ATTACHMENTS

1. Traffic Committee Minutes of September 8, 2015

TRAFFIC COMMITTEE
MINUTES
September 8, 2015

A. CALL TO ORDER

The meeting was called to order at 2:02 p.m.

B. ROLL CALL

Present: Chairperson: Ken Elwin, City Engineer

Committee Members: Stan Murdock, Director of Public Works-Operations

Bill King, Planning Manager Designee

Jeff Horta, Fire Chief Designee

Absent: Jacob Struble, Police Chief Designee

C. ORAL COMMUNICATIONS

None.

D. CONSENT CALENDAR

1. Traffic Committee Minutes of July 14, 2015

RECOMMENDATION:

Approve and file.

Stan Murdock Moved, Ken Elwin Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

Clerk's Note: Staff recommendation approved.

E. REPORTS

1. Committee Member Reports

(At this time, it is appropriate for any Committee Member to give an informational report of any work completed, training, or other item to share with other members. Please be brief, and no action may be taken on these items.)

None.

F. BUSINESS

1. No Parking Zones Along East Alexander Avenue Bounded by G Street and Oleander Avenue

(Red curb is installed adjacent to the driveway entrances of 241, 506, 634, 712, 730, and 756 East Alexander Avenue. It has been brought to staff's attention that the no parking zones were installed by City staff, but were not included in the Merced Municipal Code [MMC]. Action is required to update the MMC to reflect the no parking zones.)

Committee Member KING requested clarification on correspondence received from Steve Lyon regarding opposition to the existing red curb across from Burbank School.

After a brief discussion, Committee Members agreed the no parking zones should remain.

MOTION: To approve the existing no parking zones along East Alexander Avenue.

COUNCIL ACTION REQUIRED: Approves amending the current ordinance to include the no parking zones.

Stan Murdock Moved, Ken Elwin Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

2. Request #15-017 – Request for Alteration of Turning Lanes at the Intersection of G Street and Olive Avenue (Robert Simons)
(Citizen requests the striping and light cycles be altered on Olive Avenue at the G Street intersection to allow the east and west bound traffic on Olive Avenue to utilize the existing left turning lane and the adjacent lane for left turns onto G Street.)

Committee Member MURDOCK and Chairperson ELWIN clarified the request and discussed the conflict in movement and agreed additional research into the intersection would be necessary.

MOTION: To table the item to a future Traffic Committee meeting pending additional research by staff.

COUNCIL ACTION REQUIRED: None at this time.

Ken Elwin Moved, Stan Murdock Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

3. Request #15-018 - Request for Police Enforcement or Installation of Speed Bumps Along McCombs Drive (Tom Reta)
(Citizen requests police presence or the Installation of Speed Bumps along McCombs Drive due to vehicles speeding through the neighborhood.)

Citizen TOM RETA explained the previously installed 25 MPH signs have not helped the speeding issue in the area and requested possibly a speed trailer as a deterrent.

Chairperson ELWIN suggested the issue be discussed with the Chief of Police, as the Police representative was not at the meeting.

Committee Member MURDOCK informed Mr. Reta that the City does not have any functioning speed/radar trailers at the moment.

MOTION: To deny the request for speed bumps and refer to the Police Department for the availability of additional patrol to perform speed checks.

COUNCIL ACTION REQUIRED: None at this time.

Stan Murdock Moved, Bill King Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

4. Request #15-019 - Request for Removal of 2-Hour Parking Limit or Issuance of Parking Permits for Designated Spaces at the Mondo Building Parking Lot (Manuel Alvarado)
(Sierra Health Foundation Employee requests removal of two-hour parking limit in the parking lot located behind the Mondo Building on Main Street due to employees of the surrounding businesses parking on the street to avoid the two-hour limit, taking away from customer parking.)

Citizen MANUEL ALVARADO detailed his concerns on parking issues in Downtown Merced, requesting the 2-hour parking limit be removed.

Chairperson ELWIN stated a meeting with the Downtown Association on the proposed parking changes would be necessary to remain consistent with past practice, and that the effort would be referred to the Economic Development Department for coordination.

MOTION: To refer the item to the Downtown Association to make an official recommendation to the Traffic Committee.

COUNCIL ACTION REQUIRED: None at this time.

Ken Elwin Moved, Bill King Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

5. Request #15-020 – Request for Two Handicap Parking Spaces and Three 30-Minute Parking Spaces on K Street at Main Street (Cliff Caton)
(Property owner requests the on-street parking on the east side of K Street at Main Street be converted to two handicap parking spaces and three thirty-minute parking spaces to better serve the customers at Valley Health Center and Medical Supply.)

Chairperson ELWIN detailed the location of existing handicap parking spaces and the required sidewalk changes necessary to accommodate the request. Mr. ELWIN also stated the item should be referred to the Downtown Association prior to a Traffic Committee decision.

MOTION: To refer the item to the Downtown Association to make an official recommendation to the Traffic Committee.

COUNCIL ACTION REQUIRED: None at this time.

Stan Murdock Moved, Bill King Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

6. Request #15-021 – Request for Temporary Construction Only Parking on Portions of Barclay, Beckman, and Tolman Ways and Permanent Two-Hour Parking Zones on a Portion of Barclay Way (Lennar Homes)
(Developer requests temporary restricted parking during the construction of new homes, as well as permanent two-hour parking between 9:00 AM and 6:00 PM after the homes on Barclay are built.)

Lennar Land Development Manager BILL WALLS and Attorney MIKE SLATER detailed their request, describing the parking issues due to the UC Merced Bus Pick-up / Drop-off location.

Chairperson ELWIN asked for clarification on the location of the model homes and reiterated that temporary construction only parking is handled through the encroachment permit process. It was also clarified that the 2-hour parking zones would be removed after the model homes are sold.

Committee Member MURDOCK questioned the use of “permanent”, citing the Manual of Uniform Traffic Control Devices. It was clarified permanent was not part of Lennar’s request.

Committee Member KING stated the broader issue is that the UC Merced Bus Stop locations determine the area of concern. Mr. KING questioned why Lennar’s request included both sides of the street, as the development was only happening on one side. Mr. SLATER insisted both sides were necessary to alleviate the traffic issues and to ensure UC Merced would move their bus stop location.

The Committee discussed disclosure to the owners purchasing the newly constructed homes regarding the future removal of the 2-hour parking zones. Lennar’s representatives agreed that Lennar would notify the City when the model homes were sold.

MOTION: To approve the 2-hour parking zones, with the stipulation that (1) the timed zones would be removed after the sale of the model homes and that (2) Lennar would provide a disclosure regarding the future removal of the 2-hour parking to the homeowners.

COUNCIL ACTION REQUIRED: Approve amending the current ordinance to add the two-hour parking zones on a portion of Barclay Way.

Stan Murdock Moved, Bill King Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

7. Request #15-022 – Request for Pavement Markers Along the Crosswalk at the Intersection of R Street and Loughborough Drive (Elizabeth Lopez)
(Citizen requests pavement markers to assist persons with a visual impairment disability in crossing the intersection of R Street and Loughborough, as well as other intersections throughout Merced.)

Citizen ELIZABETH LOPEZ was present and described her concerns with the crosswalk at Loughborough Drive.

Chairperson ELWIN described the recent improvements made at the Southeast and Southwest corners, which included the installation of truncated domes.

Ms. LOPEZ suggested the City work with Mobility Specialist Tara Brown-Ogilvie of the Helen Keller National Center as a possible resource. Chairperson ELWIN agreed to speak with the mobility specialist, as well as research other options for the intersection internally.

MOTION: To continue the item to a future Traffic Committee meeting, pending additional research by staff.

COUNCIL ACTION REQUIRED: None at this time.

Ken Elwin Moved, Bill King Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

8. Request #15-024 – Request for Four-Way Stop at Olivewood Drive and Meadows Avenue (Planning Commission)
(Planning Commission requests a four-way stop at the intersection of Olivewood Drive and Meadows Avenue due to changes in traffic volumes with the addition of a proposed tire store at 1204 W. Olive Avenue.)

Committee Member KING clarified the request was a separate motion made by the Planning Commission due to their concerns about traffic volumes and that their recommendation was not a condition of approval for the proposed tire store.

Chairperson ELWIN informed the Committee that 7 accidents occurred at the intersection within the last 5 years, which did not meet the minimum traffic warrants for installation of stop signs.

Committee Member MURDOCK suggested the intersection be looked at in the future as there is no current issue.

MOTION: To deny the request for a four-way stop.

COUNCIL ACTION REQUIRED: None at this time.

Stan Murdock Moved, Jeff Horta Seconded

Vote: 4-0

Voting Aye: Ken Elwin, Stan Murdock, Bill King, Jeff Horta

Absent: Jacob Struble

G. ADJOURNMENT

The meeting was adjourned at 3:07 pm.

By:



Jamie Cruz
Secretary II/Recording Secretary

Approved:



Ken Elwin
City Engineer/Chairperson



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.5.

Meeting Date: 12/7/2015

SUBJECT: City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of June 15, 2015, July 6, 2015, and July 20, 2015.

REPORT IN BRIEF

Official adoption of previously held meeting minutes.

RECOMMENDATION

City Council/Public Financing and Economic Development/Parking Authority - Adopt a motion approving the meeting minutes of June 15, July 6, and July 20, 2015.

ALTERNATIVES

1. Approve as recommended; or,
2. Approve, subject to amendments.

ATTACHMENTS

1. Minutes of June 15, 2015
2. Minutes of July 6, 2015
3. Minutes of July 20, 2015

**CITY COUNCIL
MINUTES
June 15, 2015**

A. STUDY SESSION ROLL CALL

Clerk's Note: Closed Session was taken out of order on the Agenda and placed before the Study Session.

All Council Members were present with the exception of Council Members LOR and DOSSETTI who were absent.

B. STUDY SESSION

1. Planning Commission Applicant Interviews

City Manager John BRAMBLE conducted an interview session with the Planning Commission applicants.

Applicants in attendance were William BAKER, Robert DYLIBA, and Lee LOR.

C. CLOSED SESSION ROLL CALL

Mayor Stanley Thurston, Mayor Pro Tempore Josh Pedrozo, Council Members Michael Belluomini, Kevin Blake, Tony Dossetti, Noah Lor, Mike Murphy

Mayor THURSTON called the Closed Session of the City Council of the City of Merced, California to order at 5:30 p.m. All Council Members were present with the exception of Council Member LOR who was absent.

D. CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS -- Agency

Designated Representative: Director of Support Services Deneen Proctor; Employee Organizations: International Association of Fire Fighters, Local 1479; Merced Association of Police Sergeants.
AUTHORITY: Government Code Section 54957.6

E. CALL TO ORDER

Mayor THURSTON called the Regular Meeting of the City Council of the City of Merced, California to order at 7:02 p.m.

1. Invocation - Pastor Bruce Logue, Lifespring Church

The Invocation was presented by Pastor Bruce Logue, Lifespring Church.

2. Pledge of Allegiance to the Flag

F. ROLL CALL

1. Mayor Stanley Thurston, Mayor Pro Tempore Josh Pedrozo, Council Members Michael Belluomini, Kevin Blake, Tony Dossetti, Noah Lor, Mike Murphy

All Council Members were present with the exception of Council Member LOR who was absent.

2. City Clerk Announcement Pursuant to Government Code 54952.3
(In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority, and Public Financing and Economic Development Authority. City Council Members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority, and Public Financing and Economic Development Authority receive no compensation.)

G. REPORT OUT OF CLOSED SESSION

There was no report.

H. CEREMONIAL MATTERS

1. Proclamation - Social Media Day

Council Member MURPHY read a Proclamation for Social Media Day. The Proclamation was accepted by Toni PIRTLE, Merced College.

I. WRITTEN PETITIONS AND COMMUNICATIONS

1. City Manager's, City Attorney's and/or City Clerk's Offices will announce the receipt of any written petitions or communications.

There were no written petitions or communications.

J. ORAL COMMUNICATIONS

Isaias RUMERE, Merced - spoke in favor of High Speed Rail.

Lisa KEYSER-GRANT, Merced - spoke on bicycle issues.

Daniel KAZAKOS, Merced - spoke on issues with the Downtown Fund.

Marco LAGUNA, Merced - spoke on using the Amphitheater in Applegate Park.

Miranda LUTZOW, Assistant City Clerk - introduced the High School Ambassadors.

K. CONSENT CALENDAR

Items K.6. - Award of Bid to West Valley Construction Company, Inc., for the Community Development Block Grant (CDBG) T & 7th Streets Water Main Replacement Project 115033 and K.9. - Appropriation of Additional Funds from Measure C for Police Overtime were pulled for separate consideration.

Clerk's Note: The balance of the Consent Calendar was passed in a single vote.

Josh Pedrozo Moved, Kevin Blake Seconded

Vote: 6-0

Voting Aye: Michael Belluomini , Kevin Blake , Tony Dossetti ,
Mike Murphy , Josh Pedrozo , Stan Thurston

Absent: Noah Lor

1. Information Only - Site Plan Review Committee Minutes of May 7, 2015
2. Information Only - Recreation and Park Commission Minutes of November 24, 2014, February 23, 2015 and March 23, 2015
3. Information Only - Planning Commission Minutes of May 6, 2015
4. Reading by Title of All Ordinances and Resolutions
(*Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.)*

RECOMMENDATION:

Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

5. Amendment to the Contract with ABS Direct, Inc. for Printing and Mailing Services
(*Consider approving the amendment to the contract with ABS Direct, Inc. for printing and mailing services.)*

RECOMMENDATION:

City Council - Adopt a motion approving the amended contract with ABS Direct, Inc. to provide printing and mailing services for the City's billing statements; and, authorizing the City Manager to execute all necessary documents.

6. Award of Bid to West Valley Construction Company, Inc., for the Community Development Block Grant (CDBG) T & 7th Streets Water Main Replacement Project 115033.
(*Consider awarding a construction contract in the amount of \$454,870.10 for the replacement of a City water main located at T and 7th Streets)*

RECOMMENDATION:

City Council - Adopt a motion:

A. Awarding the bid for the Community Development Block Grant (CDBG) T & 7th Street Water Main Replacement Project 115033, to West Valley Construction Company, Inc., in the amount of \$454,870.10; and,

B. Authorizing the City Manager to execute the necessary documents and approve change orders not to exceed 10% of the total contract.

Council Member BELLUOMINI pulled this item to state he would like to see a local contractor preference for construction bids.

Michael Belluomini Moved, Mike Murphy Seconded

Vote: 6-0

Voting Aye: Michael Belluomini , Kevin Blake , Tony Dossetti , Mike Murphy , Josh Pedrozo , Stan Thurston

Absent: Noah Lor

7. 2015-16 Annual Special Tax Rates for Community Facilities District (CFD) No. 2003-2 (Services) of the City of Merced
(*Consider setting the Annual Special Tax Rates for Fiscal Year 2015-16 for Community Facilities [CFD] No. 2003-2 [Services.]*)

RECOMMENDATION:

City Council - Adopt a motion approving **Resolution 2015-23**, a Resolution of the City Council of the City of Merced, Acting as the Legislative Body of the Community Facilities District No. 2003-2 (Services) of the City of Merced, Authorizing the Establishment of an Annual Special Tax for Said District for Fiscal Year 2015-2016.

8. Supplemental Appropriation from General Fund, Fund Balance for McNamara Park Improvements
(*Consider authorizing a supplemental appropriation for the widening of the Canal Street driveway to McNamara Park Community Center and to*

complete purchase of shade sail structures for the picnic/playground area.)

RECOMMENDATION:

City Council - Adopt a motion authorizing the a supplemental appropriation from the General Fund, Fund Balance to Account 001-1120-532.25-00 Parks Maintenance, Maintenance Materials and Supplies in the amount of \$10,500 for the following:

A. \$6,000, including building permit, for widening driveway access to the McNamara Community Center and Merced Police Department, South Precinct; and,

B. \$4,500 to complete purchase of shade sail structures in the picnic/playground area of the park

9. Appropriation of Additional Funds from Measure C for Police Overtime
(Request to appropriate additional funding for police overtime under Measure C Fund 061.)

RECOMMENDATION:

City Council - Adopt a motion authorizing City Finance Officer to make budget adjustments as recommended by staff.

Council Member BELLUOMINI pulled this item to question why Measure C funds were being used to pay overtime. Council discussed the options of this item.

Council Member BELLUOMINI made a motion to move this item to later in the meeting. Council Member BLAKE seconded. The motion failed with a 3-3 vote. Council Member LOR was absent.

Mayor Pro Tem PEDROZO made a motion to approve this item. Council Member DOSSETTI seconded. The motion failed with a 4-2 vote. Finance Officer Brad GRANT pointed out that this item requires a Super Majority Vote to pass. Council Members BELLUOMINI and BLAKE voted no. Council Member LOR was absent.

Clerk's Note: This item was brought back after Public Hearings at the request of Council Member BLAKE and Mayor THURSTON in order

to vote again.

Kevin Blake Moved, Josh Pedrozo Seconded

Vote: 6-0

Voting Aye: Michael Belluomini , Kevin Blake , Tony Dossetti ,
Mike Murphy , Josh Pedrozo , Stan Thurston

Absent: Noah Lor

10. Property, Boiler and Machinery Insurance Renewal
(*Consider approving the renewal of the City's policy through Alliant Property Insurance Programs [APIP] at 1.65% premium decrease amounting to \$176,972.10 for program year 2015/2016.)*

RECOMMENDATION:

City Council - Adopt a motion ratifying the renewal of the property and boiler and machinery insurance through Alliant Property Insurance Programs (APIP) administered by Alliant Insurance Services for the period of July 1, 2015 through June 30, 2016; and authorizing the City Manager to execute any necessary documents.

11. Agreement with Abel Navarrete-Chavez to Operate Food Truck at Applegate Park (25th and P Street)
(*Consider approving an agreement to provide Food Truck services at Applegate Park [25th and P Street.])*

RECOMMENDATION:

City Council - Adopt a motion approving the Food Truck services agreement for with Abel Navarrete-Chavez (Applegate Park 25th Street parking lot); and, authorizing the City Manager to execute the necessary documents.

12. Contract for Summer Camp Services with Boys and Girls Club of Merced
(*Consider approving agreement with Boys and Girls Club of Merced to provide summer camp services in the amount of \$20,000 for FY 2015-16.)*

RECOMMENDATION:

City Council - Adopt a motion approving the agreement with the Boys and Girls Club of Merced in the amount of \$20,000 to provide summer camp services; and, authorizing the City Manager to execute the necessary documents.

13. Amendment to City Manager Employment Agreement
(*Amendment to City Manager Employment Agreement to clarify that City shall not automatically provide cost of living increase equivalent to other Executive Management employees.*)

RECOMMENDATION:

City Council - Adopt a motion approving the Second Amendment to Employment Agreement of the City Manager.

14. Second Reading Ordinance for Water Conservation Regulations of the Merced Municipal Code
(*Consider adoption of regular Ordinance of the City Council to be in compliance with Governor Brown's Executive Order of April 1, 2015 and the State Water Resources Control Board's Resolution and Emergency Statewide Urban Water Conservation Regulations of May 5, 2015.*)

RECOMMENDATION:

City Council - Adopt a motion approving the adoption of **Ordinance 2443**, an Ordinance of The City Council of The City of Merced, California, amending sections 15.32.140, "Sprinkler Systems," 15.42.040, "Prohibited Uses," and 15.42.090, "Prohibited Uses - Mandatory," of the Merced Municipal Code.

15. Increase Revenue Account for HIDTA (High Intensity Drug Trafficking Area) Overtime Reimbursement
(*Request to increase revenue account for reimbursement of overtime hours worked on HIDTA [High Intensity Drug Trafficking Area] Operation Red Right Hand.*)

RECOMMENDATION:

City Council – Adopt a motion:

- A. Accepting and increasing the revenue budget in account 001-1002-324-02-00 by \$75,000; and,
- B. Appropriating the same amount to Police Operations Division overtime account 001-1002-521-04-01; and
- C. Authorizing the City Manager to sign the necessary documents

L. PUBLIC HEARINGS

1. Public Hearing - Maintenance Districts' Engineer's Reports and Budgets - Fiscal Year 2015/2016

(Consider adopting a Resolution approving, confirming, and adopting Engineer's Reports and budgets; and a Resolution approving abeyances for Districts with reserve balances above the amount required by the Fund Balance policy for the various Maintenance Districts' after the close of the Public Hearing.)

RECOMMENDATION:

City Council - Adopt a motion:

- A. Approving **Resolution 2015-24**, a Resolution of the City Council of the City of Merced, California, approving, confirming, and adopting Engineer's Reports on Maintenance Districts; and,
- B. Approving **Resolution 2015-25**, A Resolution of the City Council of the City of Merced, California, approving, confirming, and adopting Engineer's Reports on Glenhaven Park, Quail Run, Sequoia Hill and Sky Moss Maintenance Districts, including the adoption of temporary partial abeyance of assessments for each district.

Public Works Director Stan MURDOCK gave a slide presentation on Maintenance Districts.

Mayor THURSTON opened the Public Hearing at 7:49 p.m. There

were no audience members who wished to speak. Mayor THURSTON closed the Public Hearing at 7:49 p.m.

Mike Murphy Moved, Josh Pedrozo Seconded

Vote: 6-0

Voting Aye: Michael Belluomini , Kevin Blake , Tony Dossetti , Mike Murphy , Josh Pedrozo , Stan Thurston

Absent: Noah Lor

2. Adoption of the Fiscal Year 2015-2016 Budget for the City, Public Financing and Economic Development Authority and Parking Authority
(*A request for the City Council to adopt the Fiscal Year 2015-2016 Budget for the City, Public Financing and Economic Development Authority and Parking Authority of Merced.*)

RECOMMENDATION:

City Council - Adopt a motion:

- A. Approving the adoption of **Resolution 2015-22**, a Resolution of the City Council of the City of Merced, California, Adopting the Budget and Appropriating Revenues for Fiscal Year 2015-2016; and,
- B. Approving capital projects based upon the Planning Commission's May 20, 2015 finding of consistency of Capital Improvement Program with the General Plan and as modified by recalculation of carryover projects to reflect actual balances as of June 30, 2015.

Public Financing and Economic Development Authority - Adopt a motion:

- A. Approving the adoption of **Resolution PFA 2015-01**, a Resolution of the City of Merced Public Financing and Economic Development Authority Adopting the Budget and Appropriating Revenues for Fiscal Year 2015-2016; and,
- B. Approving capital projects based upon the Planning Commission's May 20, 2015 finding for consistency of the Capital Improvement

Program with the General Plan and as modified by recalculation of carryover projects to reflect actual balances as of June 30, 2015.

Parking Authority - Adopt a motion:

A. Approving the adoption **Resolution PA 2015-01**, a Resolution of the City of Merced Parking Authority Adopting the Budget and Appropriating Revenues for Fiscal Year 2015-2016; and,

B. Approve capital projects based upon the Planning Commission's May 20, 2015 finding of consistency of the Capital Improvement Program with the General Plan and as modified by recalculation of carryover projects to reflect actual balances as of June 30, 2015.

City Manager John BRAMBLE gave a presentation on the 2015/2016 budget.

Council Member MURPHY had questions about the sign ordinance. City Manager BRAMBLE responded it should be budgeted once the Zoning Code is approved.

Mayor THURSTON asked about Police Dispatch positions. City Manager BRAMBLE stated it was in the budget.

Council Member BLAKE questioned adding Police recruitment incentives to the budget. City Manager BRAMBLE stated it would be reviewed during the fiscal year.

Mayor Pro Tem PEDROZO questioned lighting downtown. City Manager BRAMBLE said it was being looked into.

Council Member BELLUOMINI asked which Police incentives made it into the budget. City Manager BRAMBLE stated the City was paying for the Police Academy and giving a working wage to new applicants.

Council Member MURPHY requested that an Assistant City Manager position be added to the budget. Council discussed the item further.

Council Member BELLUOMINI gave a slide presentation with his ideas for the budget.

Council Member BELLUOMINI answered questions of Council regarding his ideas.

Council discussed adding positions to the Recreation and Parks Department.

Council Member DOSSETTI stated it was too late to try and fund the requested positions but suggested having talks in the future for these items.

Council Member MURPHY moved to add \$10,000 for Art Hop funding which Council Member BELLUOMINI seconded. The motion passed with a 4-2 vote with Council Members PEDROZO and DOSSETTI voting no. Council Member LOR was absent.

Council Member MURPHY moved to add \$36,000 for the shelter at the Sports Complex which was seconded by Mayor Pro Tem PEDROZO. The motion passed with a 6-0 vote. Council Member LOR was absent.

Mayor THURSTON moved to add \$10,000 for the McNamara Center which was seconded by Council Member BELLUOMINI. The motion failed with a 2-4 vote. Council Members MURPHY, DOSSETTI, BLAKE, and Mayor Pro Tem PEDROZO voted no. Council Member LOR was absent.

Council Member MURPHY moved to add \$30,000 to the budget for the False Alarm Ordinance which was seconded by Council Member DOSSETTI. The motion passed with a 6-0 vote. Council Member LOR was absent.

Mayor THURSTON opened the Public Hearing at 9:55 p.m.

Daniel KAZAKOS, Merced - spoke in favor of changing the sign ordinance.

Wayne EISENHART, Merced - spoke in favor of the proposed budget and public safety.

Marco LAGUNA, Merced - spoke on being involved in the community.

Council discussed when supplemental items would be brought back for further discussion.

Finance Officer GRANT stated all of the numbers used in the five year forecast would not be available until October.

Josh Pedrozo Moved, Mike Murphy Seconded

Vote: 6-0

Voting Aye: Michael Belluomini , Kevin Blake , Tony Dossetti , Mike Murphy , Josh Pedrozo , Stan Thurston

Absent: Noah Lor

M. BUSINESS

1. Appointment - Planning Commission
(*Consider accepting nominations and appointing up to two members to the Planning Commission.*)

RECOMMENDATION:

City Council - Accept nominations and appoint up to two individuals to the Planning Commission.

Mayor THURSTON nominated Bill BAKER for the Planning Commission and Mayor Pro Tem PEDROZO seconded. The vote passed 5-0 with Council Member DOSSETTI abstaining and Council Member LOR absent.

Mayor Pro Tem PEDROZO nominated Robert DYLINEA for the Planning Commission with Mayor THURSTON seconding. The vote passed 3-2 with Councilmembers BELLUOMINI and MURPHY voting no, Council Member DOSSETTI abstaining and Council Member LOR absent.

2. Requests to Add Item to Future Agenda

There were no requests.

3. City Council Comments

Mayor Pro Tem PEDROZO thanked the Merced Fire Department for removing grass from the landscape at the stations to conserved water

during the drought.

N. ADJOURNMENT

1. Adjourn to Monday, July 6, 2015 at 6:30 p.m.

RECOMMENDATION:

City Council - Adopt a motion adjourning to Monday, July 6, 2015 at 6:30 p.m. for Closed Session.

Mike Murphy Moved, Josh Pedrozo Seconded

Vote: 5-0

Voting Aye: Michael Belluomini , Kevin Blake , Tony Dossetti , Mike Murphy , Josh Pedrozo

Voting Abstain: Stan Thurston

Absent: Noah Lor



CITY OF MERCED

City Council Chambers
Merced Civic Center
2nd Floor
678 W. 18th Street
Merced, CA 95340

Minutes

City Council/Public Finance and Economic Development Authority/Parking Authority

Monday, July 6, 2015

7:00 PM

Closed Session at 6:30 p.m.; Regular Session at 7:00 p.m.

A. CLOSED SESSION ROLL CALL

Present: 7 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, Council Member Noah Lor, and Council Member Mike Murphy

Absent: 0

B. CLOSED SESSION

Closed Session was called to order at 6:30 p.m.

Closed Session adjourned at 6:55 p.m.

B.1.

SUBJECT: CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: Director of Support Services Deneen Proctor; Employee Organizations: International Association of Fire Fighters, Local 1479; Merced Association of Police Sergeants. **AUTHORITY:** Government Code Section 54957.6

C. CALL TO ORDER

Mayor THURSTON called the meeting to order at 7:01 p.m.

C.1 Invocation - Abdur Wali, President Ahmdiya Muslim Community, Merced Chapter

The invocation was presented by Abdur Wali, President Ahmdiya Muslim Community, Merced Chapter.

C.2 Pledge of Allegiance to the Flag

D. ROLL CALL

E. REPORT OUT OF CLOSED SESSION

There was no report out of Closed Session.

F. CEREMONIAL MATTERS

F.1 Proclamation - Parks Make Life Better Month

The Proclamation presented by Council Member Tony DOSSETTI and accepted by Dr. Napoleon WASHINGTON and Jerome RASBERRY.

F.2 Father of the Year Award - Presented by Paul Lundberg

The Father of the Year Award presentation was tabled until the July 20, 2015 City Council meeting.

G. WRITTEN PETITIONS AND COMMUNICATIONS

There were none.

H. ORAL COMMUNICATIONS

Abdur WALI, Merced - spoke on the topic of Ramadan.

Mike CONWAY, Assistant to the City Manager - spoke on the McNamara Park Revitalization Project.

Lorraine ANDERSON, Merced - spoke on the watering schedule for City parks.

Rick TELEGAN, Fresno - spoke on the sewer master plan.

Monica VILLA, Merced - spoke about election districts.

Clifford DALE, Merced - spoke about McNamara Park.

Derek CARLON, Merced - spoke about water issues and planting wildflowers and nut trees around town.

Peter HOWELL, Merced - spoke about annexation of the land between Bellevue and UC Merced.

John BURCHETT, Merced - spoke against the proposed Bellevue Ranch project.

K. REPORTS

Mayor THURSTON requested that Reports be heard before the Consent Calendar.

K.1

SUBJECT: Stephen Leonard Park Youth Center lease

REPORT IN BRIEF

Consider awarding the lease to use the Stephen Leonard Park Youth Center to a local organization to support youth activities.

RECOMMENDATION

City Council - Adopt a motion selecting from one of two applicants to use the Youth Center, and; authorizing the City Manager to sign the necessary documents.

City Manager John BRAMBLE reviewed the conflicts that prevented the NAACP and 4-H Club, and the Atlas Soccer Club had in sharing the Stephen Leonard Park.

Rosa BARRIGAN, Merced - presented the proposed program for the Atlas Soccer Academy.

William GOMEZ, Merced - spoke about his positive experience with the Atlas Soccer Club.

Fernando AGULIAR, Atlas Soccer Club - spoke about the number of children they assist.

Juan MENA, Merced - spoke about his positive experience with the Club.

Necola ADAMS, Merced NAACP - reviewed the Spirit of Excellence Academy proposal.

Monica GRASLEY, Lifeline - expressed her willingness to work cooperatively with other groups.

Kelly TURNER, Merced - spoke of her willingness to collaborate with other groups.

Rochelle ABRIL, Merced - expressed her frustration that 5 groups should share McNamara Park when Stephen Leonard will only house 1 group.

Mayor THURSTON spoke in favor of the Atlas Soccer Academy.

Council Member DOSSETTI stated that the Atlas Soccer Academy would be better suited at McNamara Park because soccer fields are located there, and that the groups should work together to share the McNamara space. He expressed his concern that the groups cannot collaborate.

Mayor Pro-Tempore PEDROZO spoke in favor of the Atlas Soccer Academy due to their proven track record, but stated he would like all of the youth groups to get together and cooperatively provide services.

Council Member BLAKE spoke in favor of the Atlas Soccer Academy due to their proven track record, but is hopeful that the NAACP could find an alternative location for their curriculum. He stated that the McNamara Park contract should not be changed.

Council Member BELLUOMINI asked about flexibility in the current McNamara Park contract. Assistant to the City Manager Mike CONWAY responded that the contract can be cancelled within 60 days without any reason. Mr. BELLUOMINI stated that he is supportive of all the proposals, and that the buildings should be shared in order to accommodate everyone, with the assistance of staff to help with scheduling.

Council Member MURPHY suggested the groups get together with the help of a trained mediator to work out a schedule. He expressed his desire to keep the McNamara contract intact with the existing groups.

Council Member LOR stated that he would like to see joint use of the facility, but that it is difficult to have groups collaborate because of the responsibility for damage.

A motion was made by Council Member Dossetti that use of Stephen Leonard Park Youth Center be granted to both applicants, who can coordinate with the assistance of a third party. The Motion failed due to a lack of second.

A motion was made by Mayor Thurston, seconded by Council Member Blake, to award the contract to Atlas. The motion carried by the following vote:

Aye: 5 - Mayor Thurston, Council Member Belluomini, Council Member Blake, Council Member Lor, and Council Member Murphy

No: 2 - Mayor Pro Tempore Pedrozo, and Council Member Dossetti

Absent: 0

J. PUBLIC HEARINGS

Mayor THURSTON requested that Public Hearings be heard before the Consent Calendar.

J.1

SUBJECT: General Plan Amendment #15-01, Site Utilization Plan Revision #11 to Planned Development (P-D) #42, Appeal of Conditional Use Permit #1197 for the Bellevue Apartment Project

REPORT IN BRIEF

C.W.N. Development, LLC seeks City Council approval to: modify the road improvement order and financing of off-site infrastructure and to allow the construction of a 432-unit apartment project on a site bounded by M Street, M Street Circle, Mandeville Lane and Barclay Way within the Bellevue Ranch Master Development Plan Area.

RECOMMENDATION

City Council - Adopt a motion (denying the project as recommended by the Planning Commission) approving **Resolution 2015-26**, "A Resolution of The City Council of The City of Merced, California, Adopting a Notice of Exemption (Environmental Review #15-03), Denying the Amendment of the General Plan (General Plan Amendment #15-01) to Modify the Order and Financing of Off-site Public Infrastructure of the Bellevue Ranch Master Development Plan; Denying a Site Design with all Parking Lots to be Sited Between the Street and Buildings (Site Utilization Plan Revision #11 to Planned Development #42); and Rejecting the Applicant's Appeal to Approve Conditional Use Permit #1197 (Attachment 9).

OR

City Council - Adopt a motion (approving the projects, overturning the recommendation of the Planning Commission):

- A. Approving Resolution 2015-27, "A Resolution of The City Council of The City of Merced, California, Adopting a Notice of Exemption (Environmental Review #15-03), Amending the General Plan (General Plan Amendment #15-01) to Modify the Order and Financing of Off-site Public Infrastructure of the Bellevue Ranch Master Development Plan; to Allow a Site Design with all Parking Lots to be Sited Between the Street and Buildings; Upholding Applicant's Appeal to Approve Conditional Use Permit #1197; and Approving a Developer Agreement Therefore (Attachment 10); and
- B. Introducing **Ordinance 2444**, "An Ordinance of The City Council of The

City of Merced, California, Amending Planned Development #42 by Changing the Order and Financing of Off-Site Public Infrastructure of the Bellevue Ranch Master Development Plan, and to Allow a Site Design with All Parking Lots to be Sited Between the Street and Buildings, and Approving the Developer Agreement Therefore (Attachment 11); and,

- C. Authorizing the City Manager to execute the Developer Agreement (Attachment 12) and all related documents.

City Planner Bill KING reviewed the proposed project and the Planning Commission's decision to deny the General Plan Amendment.

Council Member BELLUOMINI asked if Council had any obligation to approve the General Plan Amendment, whether Council could impose conditions, and why a 20-year EIR is being used. City Planner Bill KING responded. City Attorney HOM responded to the question about the EIR.

Council Member LOR asked clarifying questions. City Planner KING responded.

Mayor THURSTON opened the Public Hearing at 9:38 p.m.

Kevin CARTER, CNW Developments - briefly reviewed the project and answered City Council questions.

Mayor THURSTON asked questions regarding the phasing of the project. Mr. CARTER answered.

Council Member MURPHY asked why the building was setback and whether the building would house students. Kevin CARTER, CNW Developments responded.

Council Member BELLUOMINI asked why the design requires visitors to go through a bedroom to get to a bathroom. Kevin CARTER, CNW Developments, responded.

Council Member MURPHY expressed that City Council could not legally take away the right to build multi-housing units.

Jenny TROST, Merced - spoke against overturning the Planning Commission's decision.

Eric MOORE, Merced - spoke against overturning the Planning Commission's decision.

Steve GUTIERREZ, Merced - spoke against overturning the Planning Commission's decision.

Wendy BLAINE, Merced - spoke against overturning the Planning Commission's decision.

Karen CRANE-McNAB, Merced - spoke against overturning the Planning Commission's decision.

John BURCHETT, Merced - spoke against overturning the Planning Commission's decision.

Tia MAXON, Merced - spoke against overturning the Planning Commission's decision.

John ANGUS, Merced - spoke against overturning the Planning Commission's decision.

Marilyn OBERA, Merced - spoke against overturning the Planning Commission's decision.

Mike LUEVANO, Merced - spoke against overturning the Planning Commission's decision.

Judy HARSE, Merced - spoke against overturning the Planning Commission's decision.

Brenda TOVAR, Merced - spoke against overturning the Planning Commission's decision.

Delores CRULL, Merced - spoke against overturning the Planning Commission's decision.

William HEISER, Merced - spoke against overturning the Planning Commission's decision.

Gloria ACOBA, Merced - spoke against overturning the Planning Commission's decision.

Lois WELLS, Merced - spoke against overturning the Planning Commission's decision.

Ricky WELLS, Merced - spoke against overturning the Planning

Commission's decision.

Peter HOWELL, Merced - spoke against overturning the Planning Commission's decision.

Mayor THURSTON closed the Public Hearing at 10:37 p.m.

Mayor THURSTON re-opened the public hearing at 10:38 p.m.

Kevin CARTER, CNW Developments spoke in favor of the project.

Mayor THURSTON re-closed the Public Hearing at 10:51 p.m.

Council Member BELLUOMINI suggested that building units 2, 3, and 4, be reduced to single-story units in order to reduce the height, number of total units by 102 bedrooms and free up parking for the other units. In addition, buildings 1 and 5 could be reduced to 2-story units which would reduce 34 bedrooms. The total units would be reduced 848 to 576 bedrooms.

Mayor THURSTON expressed his concern that this project is too big, even for future student demand. He also stated that the Planning Commission's finding of incompatible use should be respected. Mayor THURSTON suggested that Council Member BELLUOMINI's idea be plotted out before City Council made a decision.

Council Member DOSSETTI stated he could not support the project as it is now, but that property owners could get together with the developer to work something out that is mutually agreeable.

Planning Manager Kim ESPINOZA stated if the City Council denies the item without prejudice, it could be brought back before a year if there are significant changes.

Council Member PEDROZO agreed that the density should be lowered, and would like the project to come back with options for lower density.

Council Member BLAKE expressed his concern with the current plan, but would potentially support a scaled-back project.

Council Member MURPHY requested the proposed number of occupants be included when the revised project comes before Council.

Director of Development Services David GONZALVES suggested that Council continue the item and allow the developer to come back with a

substantially changed project.

A motion was made by Mayor Thurston, seconded by Mayor Pro Tempore Pedrozo, that this agenda item be tabled. The motion carried by the following vote:

Aye: 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0

I. CONSENT CALENDAR

Mayor THURSTON left the meeting and did not return for the remainder.

The meeting went into Recess at 11:25 p.m. and reconvened at 11:30 p.m.

A motion was made by Council Member Dossetti, seconded by Council Member Murphy, to approve the balance of the consent calendar. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 3 - Mayor Thurston, Bramble, and Hom

I.3

SUBJECT: City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of February 9, February 23, April 1, April 6, April 20 and May 4, 2015

REPORT IN BRIEF

Official adoption of previously held meeting minutes.

RECOMMENDATION

City Council/Public Financing and Economic Development/Parking Authority - Adopt a motion approving the meeting minutes of February 9, February 23, April 1, April 6, April 20 and May 4, 2015.

Council Member BELLUOMINI removed this item to request changes to the April 6, 2015 City Council Meeting minutes.

A motion was made by Council Member Belluomini, seconded by Council Member Blake, that the minutes be approved with amendments. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 1 - Mayor Thurston

I.5

SUBJECT: Award Bid to Carbon Activated Corporation for Well #3C GAC Adsorption System, Project No. 115048

REPORT IN BRIEF

Consider awarding a contract in the amount of \$519,717.42 to Carbon Activated Corporation to construct wellhead treatment system carbon vessels for Well #3C.

RECOMMENDATION

City Council - Adopt a motion awarding the bid for the Well #3C GAC Adsorption System Project No. 115048 to Carbon Activated Corporation, in the amount of \$519,717.42; and, authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

Council Member BELLUOMINI removed this item to asked about the cost of a new well and the recovery of costs due to an insurance claim. Environmental Project Manager Joe ANGULO responded.

A motion was made by Council Member Belluomini, seconded by Council Member Dossetti, that this agenda item be adopted. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 1 - Mayor Thurston

I.7

SUBJECT: Reject All Bids for the CMAQ Traffic Signal Synchronization Project 113066 (5085-035)

REPORT IN BRIEF

Consider rejecting all bids due to insufficient funding.

RECOMMENDATION

City Council - Adopt a motion rejecting all bids for the CMAQ Traffic Signal Synchronization Project 113066 (5085-035) and directing staff to advertise the project for rebidding.

Council Member BELLUOMINI removed this item to ask clarifying questions about the timeline of the project.

City Engineer Ken ELWIN responded.

A motion was made by Council Member Belluomini, seconded by Council Member Blake, that this agenda item be adopted. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 1 - Mayor Thurston

I.8

SUBJECT: Increase Contingency Percentage and Approve Change Order for CMAQ Sidewalk Infill on Carol Avenue Project 114047

REPORT IN BRIEF

Authorizes approval of a change order to the CMAQ Sidewalk Infill on Carol Avenue construction contract in the amount of \$33,838.49 for additional concrete work.

RECOMMENDATION

City Council - Adopt a motion increasing the contingency to 15% and approving a change order for the CMAQ Sidewalk Infill on Carol Avenue Project 114047, to George Reed, Incorporated, in the amount of \$33,838.49; and, authorizing the City Manager to sign the necessary documents.

City Manager BRAMBLE removed this item to clarify that the contingency requested is 10.56%

A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Blake, that this agenda item be adopted. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 1 - Mayor Thurston

I.9

SUBJECT: Increase Contingency Percentage of Avison Construction, Inc.,

Construction Contract for the Merced Roadway Rehabilitation Project
114037/115032

REPORT IN BRIEF

Consider approval of an increase to the contingency for up to 15% of the original contract bid amount for the roadway rehabilitation of M and R Streets.

RECOMMENDATION

City Council - Adopt a motion approving a contingency percentage increase not to exceed 15% of the original contract bid amount for the Merced Roadway Rehabilitation Project 114037/115032 with Avison Construction, Inc.; and, authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 15% of the total contract.

Council Member MURPHY pulled this item but stated his question had been answered.

A motion was made by Council Member Murphy, seconded by Council Member Blake, that this agenda item be adopted. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 1 - Mayor Thurston

L. BUSINESS

L.1. SUBJECT: Appointments - Planning Commission and Regional Airport Authority

REPORT IN BRIEF

Consider reappointing one member to the Planning Commission and one member to the Regional Airport Authority and accepting one nomination and appointing one new member to the Regional Airport Authority.

RECOMMENDATION

City Council - Accept nominations and appoint individuals to serve as members of the Planning Commission and the Regional Airport Authority for a full term.

A motion was made by Council Member Murphy, seconded by Mayor Pro-Tempore PEDROZO, that Alvin Osborn, Jr. be appointed to the Regional Airport Commission. The motion carried by the following vote:

Aye: 6 - Mayor Pro-Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 1 - Mayor Thurston

A motion was made by Council Member Dossetti, seconded by Council Member Belluomini, that Peter Padilla be appointed to the Planning Commission for a second term. The motion carried by the following vote:

Aye: 5 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, and Council Member Lor

No: 1 - Council Member Murphy

Absent: 1 - Mayor Thurston

L.2 Request to Add Item to Future Agenda

L.3 City Council Comments

Council Member MURPHY reported he attended the Greater Merced Chamber of Commerce's installation dinner.

Council Member BELLUOMINI requested if there is another way to save the required 36% of water without neglecting the landscape in parks and requested a report back from staff.

Council Member PEDROZO thanked the Streets and Roads department for their work on R street.

M. ADJOURNMENT

The meeting adjourned at 11:49 p.m.

A motion was made by Council Member Murphy, seconded by Council Member Lor, adjourning the meeting to Wednesday, July 8, 2015 at 5:00 p.m. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 1 - Mayor Thurston



CITY OF MERCED

City Council Chambers
Merced Civic Center
2nd Floor
678 W. 18th Street
Merced, CA 95340

Minutes

City Council/Public Finance and Economic Development Authority/Parking Authority

Monday, July 20, 2015

7:00 PM

Study Session at 6:00 p.m., Regular Session at 7:00 p.m.

A. STUDY SESSION ROLL CALL

Present: 7 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, Council Member Noah Lor, and Council Member Mike Murphy

Absent: 0

B. STUDY SESSION

The Study Session was called to order at 6:01 p.m..

B.1.

SUBJECT: Re-evaluation of the Future Police Building Site

REPORT IN BRIEF

The City Council has indicated an interest in re-evaluating the site that was selected as the City's future Police Headquarters Building.

RECOMMENDATION

City Council - Adopt a motion providing the City Manager with direction regarding the future Police Headquarters Building.

City Manager BRAMBLE gave a brief report on options regarding the sale of the property identified for the new police station site.

City Council Members asked questions relating to the sale of existing property. Deputy City Attorney Ken ROZELL and City Manager BRAMBLE responded.

Mayor THURSTON asked Council if they thought that the public should have more input into the process. Council Member BELLUOMINI suggested that potential sites be identified before the public is encouraged to comment.

Council Members asked additional questions related to the requirements of declaring the site as surplus. City Manager BRAMBLE responded.

Council Member BELLUOMINI suggested that the police headquarters should be located in the downtown area among other criminal justice institutions like the court and sheriff's office.

Council Member BELLUOMINI asked for clarification on the criteria outlined in the staff report.

Council Member BELLUOMINI suggested that staff look into a site at 23rd Street and N Street.

Mayor THURSTON suggested the former Orchard Supply building and the area bordering 16th, Martin Luther King Jr. Street and M Street to K Street.

Council Member LOR suggested 25th Street, 26th Street and M Street, across from Applegate Park, which previously housed clinics.

Council Member DOSSETTI asked Director of Economic Development Frank QUINTERO if there is a proposal in the old Travis Credit Union. Director QUINTERO responded.

Council Member MURPHY suggested the old Bianchi Produce factory at West Olive Avenue.

City Manager BRAMBLE stated that these locations will be evaluated along with the original sites.

The Study Session adjourned at 6:42 p.m.

A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Belluomini, to start the process to re-examine potential police headquarter sites. The motion carried by the following vote:

Aye: 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0

C. CALL TO ORDER

The Regular Session was called to order at 7:01 p.m.

C.1. Invocation - Chas Jolly, Member of the Board Congregation Etz Chaim

C.2. Pledge of Allegiance to the Flag

D. ROLL CALL

Present: 7 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, Council Member Noah Lor, and Council Member Mike Murphy

Absent: 0

F. CEREMONIAL MATTERS

F.1. Father of the Year Award - Presented by Paul Lundberg

Council Member DOSSETTI introduced Paul LUNDBERG, coordinator of the Father of the Year award program.

Paul LUNDBERG made a presentation to the essay winner of the Father of the Year, Elliana and her father Nelson ORTIZ.

G. WRITTEN PETITIONS AND COMMUNICATIONS

H. ORAL COMMUNICATIONS

Monica VILLA, Merced - spoke on the election districting process and homeless issues.

I. CONSENT CALENDAR

Adoption of the Consent Calendar may be made by one motion of the City Council, provided that any Councilmember, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the item will be discussed and voted on separately.

Approval of the Consent Agenda

Agenda items I.3. - Award Bid to BMY Construction Group, Inc., for the Wastewater Treatment Plant UV Building Remodel Project 115029, I.7. - Citizen Engagement Application Service Contract, I.10. - Parking Enforcement on County Parking Lots, and I.11. - Fahren's Park Assessment District Bond Call were pulled from the Consent Calendar for separate consideration.

A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Blake, to approve the balance of the Consent Agenda. The motion carried by the following vote:

Aye: 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0

I.1. **SUBJECT:** Information Only - Economic Development Advisory Committee Minutes of January 27, 2015 and March 31, 2015

This Consent Item was approved.

I.2. **SUBJECT:** Reading by Title of All Ordinances and Resolutions

REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

RECOMMENDATION

City Council - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

This Consent Item was approved.

I.4. **SUBJECT:** Award Bid to DOD Construction for the CDBG South Merced ADA Ramps Project 115028

REPORT IN BRIEF

Consider awarding a construction contract in the amount of \$105,990 for the installation of handicap access ramps and sidewalks at various locations.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving a technical amendment to the 2014 HUD Annual Action Plan in the amount of \$50,000 due to construction costs; and,
- B. Authorizing a transfer from Fund 018-Housing to Fund 450-Streets and Signals CIP in the amount of \$50,000 and appropriating the same to Account 450-1104-637.65-00-Project 115028 South Merced ADA Ramps; and,

- C. Approving the First Amendment to Interdepartmental Cooperative Agreement between the City of Merced Economic Development and Development Services Departments in the amount of \$50,000; and,
- D. Awarding the bid for the CDBG South Merced ADA Ramps Project 115028, to DOD Construction, in the amount of \$105,990; and,
- E. Authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

This Consent Item was approved.

I.5. SUBJECT: Street Sweeping Agreement with Merced Camelot Owners Association

REPORT IN BRIEF

Consider providing street sweeping services to Merced Camelot Owners Association, as the residents pay for refuse services, which include street sweeping

RECOMMENDATION

City Council - Adopt a motion approving an agreement to provide street sweeping to Merced Camelot Owners Association

This Consent Item was approved.

I.6. SUBJECT: Purchase a Pierce Quantum Pump Under Cab (PUC) Pumper Fire Engine Utilizing a Government Procurement Program and Waiving the Competitive Bidding Process

REPORT IN BRIEF

Recommends purchasing a Pierce Quantum PUC Pumper Fire Engine from Pierce Manufacturing, Inc., (Pierce) using the Houston-Galveston Area Council Government (HGAC) Cooperative Purchasing Program and waiving the bidding threshold.

RECOMMENDATION

City Council - Adopt a motion:

- A. Authorizing the purchase of one (1) Quantum PUC Pumper Fire Engine from Pierce, with a total purchase price of \$575,203.42,

which includes the discount through the HGAC Cooperative Program, factory inspection trips, delivery/dealer preparation, performance bond, contingency fund, 100% pre-payment discount, and 8% sales tax; and,

- B. Waiving the competitive bid requirements, in conformance with Section 3.04.210 of the Merced Municipal Code.

This Consent Item was approved.

- I.8.** **SUBJECT:** Authority to Sign Addendum and License E-mail Archiving Product

REPORT IN BRIEF

Consider approving an addendum to the City's existing Enterprise Agreement (EA) contract with Microsoft for e-mail archive product.

RECOMMENDATION

City Council - Adopt a motion approving an addendum to the City's Enterprise Software Agreement with Microsoft by licensing Microsoft's email archiving product (Exchange Online Archiving); and, authorizing the City Manager to sign the necessary documents.

This Consent Item was approved.

- I.9.** **SUBJECT:** Predictive Policing Software Contract

REPORT IN BRIEF

Enter into a contract with Predpol to provide predictive policing software that will assign probabilities of future crime events for \$44,700.00 for three years. The initial payment will be for \$30,000.00 and the next fiscal year payment will be \$14,700.00 for a total of \$44,700.00.

RECOMMENDATION

City Council - Adopt a motion approving the contract with Predpol, and; authorizing the City Manager to execute the necessary documents.

This Consent Item was approved.

- I.12.** **SUBJECT:** Supplemental Appropriation from General Fund, FY 14/15 Fund Balance for Contract City Attorney Services

REPORT IN BRIEF

A supplemental appropriation is required to reimburse Best, Best, & Krieger, Attorneys at Law for services rendered.

RECOMMENDATION

City Council - Adopt a motion authorizing a supplemental appropriation from the General Fund, FY 14/15 Fund Balance to Account 001-0301-512.17-00 (Professional Services) in the amount of \$7,973.90 to reimburse Best, Best, & Krieger, Attorneys at Law for services rendered and not anticipated in the original contract.

This Consent Item was approved.

I.3.

SUBJECT: Award Bid to BMY Construction Group, Inc., for the Wastewater Treatment Plant UV Building Remodel Project 115029

REPORT IN BRIEF

Consider awarding a construction contract in the amount of \$245,543 for the remodel of the WWTP UV Building.

RECOMMENDATION

City Council - Adopt a motion:

A. Awarding the bid for the Wastewater Treatment Plant UV Building Remodel Project 115029, to BMY Construction Group, Inc., in the amount of \$245,543.00; and,

B. Authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

Council Member BELLUOMINI pulled this item to ask questions. Principal Architect John SAGIN responded.

A motion was made by Council Member Belluomini, seconded by Mayor Pro Tempore Pedrozo, that this agenda item be adopted. The motion carried by the following vote:

Aye: 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0

I.7.

SUBJECT: Citizen Engagement Application Service Contract

REPORT IN BRIEF

Enter into a contract with PublicStuff, and amend a contract with SunGard

for a Citizen Engagement Application for \$17,784.29 per year.

RECOMMENDATION

City Council - Adopt a motion approving the PublicStuff contract and approving the SunGard contract amendment for a citizens engagement application; and, authorizing the City Manager to execute the necessary documents.

Council Member MURPHY pulled this item to ask questions.

Information Technology Manager Jeff BENNYHOFF gave a brief presentation on the smart phone application.

City Council Members asked additional questions. Mr. BENNYHOFF answered.

A motion was made by Council Member Murphy, seconded by Council Member Lor, that this agenda item be adopted. The motion carried by the following vote:

Aye: 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0

I.10.

SUBJECT: Parking Enforcement on County Parking Lots

REPORT IN BRIEF

Agreement between the City of Merced and Merced County for parking enforcement services on county owned parking lots located within the jurisdiction of the City of Merced.

RECOMMENDATION

City Council/Parking Authority - Adopt a motion approving an agreement with the County of Merced for the Merced Police Department to provide parking enforcement services on all County owned parking lots within the jurisdiction of the City of Merced; and authorizing the City Manager to execute all necessary documents.

City Manager BRAMBLE requested that this item be tabled until a future City Council Meeting.

This Consent Item was tabled.

I.11.

SUBJECT: Fahren's Park Assessment District Bond Call

REPORT IN BRIEF

Consider approving Fahren's Park Assessment District early Bond Call.

RECOMMENDATION

City Council - Adopt a motion approving Fahren's Park Assessment District Early Bond Call; and, authorizing the Finance Officer to make the necessary budget adjustments.

Council Member PEDROZO, DOSSETTI and LOR recsued themselves from the vote because they live in the area. Because the vote required a super-majority vote, the City Attorney's Office recommended that the Council table this item for 2 weeks until contact is made with the Fair Political Practices Commission.

A motion was made by Mayor Thurston, seconded by Council Member Blake, that this agenda item be tabled. The motion carried by the following vote:

Aye: 4 - Mayor Thurston, Council Member Belluomini, Council Member Blake, and Council Member Murphy

No: 0

Absent: 0

Abstain: 3 - Mayor Pro Tempore Pedrozo, Council Member Dossetti, and Council Member Lor

J. PUBLIC HEARINGS

J.1.

SUBJECT: Public Hearing - General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46 for an approximately 6 acre portion of a 10.42 acre parcel located at the southeast corner of Pacific Drive and Horizons Avenue

REPORT IN BRIEF

Request for City Council approval to change the General Plan, Specific Plan, and Site Utilization Plan designations for a portion of a parcel located at the southeast corner of Pacific Drive and Horizons Avenue to allow the future construction of an apartment complex.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving **Resolution 2015-29**, A Resolution of the City Council of the City of Merced, California, approving a Mitigated Negative Declaration for General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision

#4 to Planned Development (P-D) #46 and approving General Plan Amendment #14-04 and Revision #2 to the Fahrens Creek Specific Plan changing the land use designation from Low Density Residential (LD) to Village Residential (VR) for an approximately 6 acre portion of an approximately 10.42 acre parcel located at the southeast corner of Pacific Drive and Horizons Avenue;

- B. Introducing **Ordinance 2445**, an Ordinance of the City Council of the City of Merced, California, approving Site Utilization Plan Revision #4 to Planned Development (P-D) #46 changing the land use designation from Low Density Residential (LD) to Village Residential (VR) for an approximately 6 acre portion of an approximately 10.42 acre parcel generally located at the southeast corner of Pacific Drive and Horizons Avenue; and,
- C. Approving the Developer Agreement and Authorizing the City Manager to execute the necessary documents.

Director of Development Services David GONZALVES made a presentation on the requested General Plan Amendment and Site Utilization Plan Revision.

Council Members asked questions about the project. Director GONZALVES responded.

Mayor THURSTON opened the Public Hearing at 7:56 p.m.

John HINCHEY, Steiner Development spoke about the density of the project and requested Council's support.

Katie FENTERS, Golden Valley Engineering, offered to answer any questions.

The Public Hearing was closed at 8:02 p.m.

Director of Development Services GONZALVES addressed Council concerns of such a dense concentration of multi family units.

A motion was made by Council Member Murphy, seconded by Mayor Pro Tempore Pedrozo, that this agenda item be approved. The motion carried by the following vote:

- Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0

K. BUSINESS

K.1. SUBJECT: Appointment to Fill Vacancy on the Independent Districting Advisory Committee (IDAC)

REPORT IN BRIEF

Consider appointing one candidate to fill a vacancy on the IDAC.

RECOMMENDATION

City Council - Adopt a motion appointing one candidate to the Independent Districting Advisory Committee to fill the seat vacated by Carl Pollard.

A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Blake, to appoint Isabel Sanchez as a replacement member to the Independent Districting Advisory Committee. The motion carried by the following vote:

Aye: 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0

K.2. Request to Add Item to Future Agenda

Council Member BELLUOMINI requested to have an item placed on the September 8, 2015 meeting agenda to discuss City Council policies and procedures.

K.3. City Council Comments

Council Member MURPHY provided an update on the UC Merced Venture Labs workspace.

Mayor Pro Tempore PEDROZO commented on the McNamara mural project.

L. ADJOURNMENT

Adjourned to 5:30 pm on Wednesday, July 22, 2015

Council Member DOSSETTI requested the meeting be adjourned in memory of Ted HILLIS, a former police officer in Merced.

The meeting adjourned at 8:22 p.m.

A motion was made by Council Member Dossetti, seconded by Mayor Thurston, to adjourn the meeting to 5:30 p.m. on July 22. The motion carried by the following vote:

Aye: 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

No: 0

Absent: 0



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.6.

Meeting Date: 12/7/2015

SUBJECT: Reading by Title of All Ordinances and Resolutions

REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

RECOMMENDATION

City Council - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.



ADMINISTRATIVE REPORT

Agenda Item K.7.

Meeting Date: 12/7/2015

Report Prepared by: *Matt Williams, Police Lieutenant, Police Department*

SUBJECT: Agreement with Merced Lao Community Inc. for Police Services at the 2015 Hmong New Year Festival

REPORT IN BRIEF

Consider authorizing an agreement for the Merced Police Department to provide security and crowd control services.

RECOMMENDATION

City Council - Adopt a motion approving an agreement in the amount of \$4,000 with Merced Lao Community to provide security and crowd control services for the annual Hmong New Year Festival held at the Merced County Fairgrounds on December 18th, 19th and 20th 2015; and authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to other than recommended by City Council; or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items; or,
5. Continue to a future meeting.

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

Not Applicable.

DISCUSSION

The Hmong New Year Festival will be held in the City of Merced at the Merced County Fairgrounds.

Each year the Merced Police Department has provided security and crowd control for each day of this annual event.

Additionally, Merced Police Department personnel have carefully monitored and controlled the event over the years, and have been successful in providing a safe environment for those who attend.

This year's event is scheduled for a three-day period, December 18th, 19th and 20th 2015.

The December 18th opening day celebration begins at 7:30 am and it ends at 5:00pm.

On December 19th activities begin at 09:00 am and end at 5:00 pm.

On the final day of the celebration, December 21st, activities begin at 09:00 a.m. and activities end at 12:00 a.m.

As in past years, a portion of the cost for police services provided during the event will be paid for by the Hmong New Year Committee. The Police Department will use a combination of on-duty and overtime personnel to staff the event.

The cost for the City of Merced Police Department to provide the security and crowd control services is approximately \$17,885.88.

The Hmong New Year Committee will reimburse the City of Merced an amount not to exceed \$4000.00 for the security and crowd control services provided during the New Year Celebration.

Police staffing for the event will be done in a manner so that providing the security and crowd control services for the Hmong New year will have a minimal impact on police response time and police service in the city.

History and Past Actions:

Prior to 1995 the event was held in local parks and high schools located in Atwater and Winton.

However, due to youth gang crime and parking issues associated with hosting the event the Hmong New Year Committee moved the event to the Merced County Fairgrounds in 1995.

In the early years of the event, being hosted at the Merced County Fairgrounds, the police department assigned as many as 15 police officers to the event. This was in order to deal with fights and gang related problems that occurred during the event.

Over several years, the number of police officers assigned to the event has been reduced to approximately 7 officers each day.

As result of ongoing collaboration between the police department and the Hmong New Year Committee, over many years, the community has seen a reduction in gang and other crime related issues associated with the event.

Currently, the number of officers needed to staff the event is based on the ongoing collaboration with the Hmong New Year Committee, evaluation of event activities, the demographics of the event attendees, historical information related to efficient utilization of police resources to provide crowd control and based on the availability of other law enforcement and security services provided at the event.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. 2015 Agreement
2. 2015 Staffing
3. Hmong New Year Flyer

**2015 SECURITY/CROWD CONTROL AGREEMENT
BETWEEN MERCED LAO FAMILY COMMUNITY INC., AND
THE CITY OF MERCED**

Whereas, Merced Lao Family Community Inc., (Hmong New Year Committee) desires that the City of Merced (“City”) provide security and crowd control services for the Annual Hmong New Year festival to be held at the Merced County Fairgrounds (herein after “fairgrounds”);

Whereas, the City, through its Police Department, has the ability to provide such services in accordance with this agreement;

Now and therefore the City and the Hmong New Year Committee hereby agrees to the following:

Duties of City of Merced

1. In consideration for the amount stated herein, the City agrees to provide security and crowd control service for the Hmong New Year festival to be held at the Fairgrounds during the period from December 18, 2015 through December 20, 2015.
2. The security and crowd control services shall be rendered by the City inside the fair grounds during the above mentioned dates and times.
3. The discretion and authority to determine the manner by which the security services shall be rendered shall be vested solely in the City.
4. Following the close of the New Year’s celebration, the City shall submit its invoice to the Hmong New Year Committee, via office of the Merced Lao Family Community, Inc., at 1748 Miles Court, Suite B. Merced, CA 95348.

Duties of the Lao Family Community /Hmong New Year Committee

5. In exchanged for security and crowd control services to be provided by the City as set forth above, the New Year Committee shall pay the City of Merced a maximum of \$74.10 per hour per on duty officer and \$74.10 per hour for each overtime officer, with a not to exceed amount of \$4000.00 for the contract.

6. Each party (New Year Committee or City) shall defend and indemnify the other for its own acts arising out of this agreement.

By the signatures of the representatives, which appear below, the parties hereto, the City of Merced and the New Year Committee, agree to be bound by and perform the duties set forth above.

Submitted By:



Matt Williams, Police Lieutenant

City of Merced

Approved as to Form:



City Attorney

Date: 11/23/15

City Finance Department

Authorized Signature



Norman Andrade, Chief of Police

Date: _____


Date: 11-23-15



John Bramble, City Manager

Date: 11-23-2015

Lao Family Community Inc.,

By: 

New Year Coordinator

Date: 11/23/15

Merced Hmong New Year Celebration 2015
 Crow Control Schedule
 Police Officer

Day Time

Time Frame	Number of Police Officer	December 18 Friday	December 19 Saturday	December 20 Sunday	Total Services hours	Number of hour perday
7:00-8:00		0	0	0	0	1
8:00-9:00		0	0	0	0	1
9:00-10:00	2	2	2	2	6	1
10:00-11:00	2	2	2	2	6	1
11:00- 12:00	3	3	3	3	9	1
12:00- 1:00	3	3	3	3	9	1
1:00-2:00	3	3	3	3	9	1
2:00- 3:00	3	3	3	3	9	1
3:00-4:00	2	2	2	2	6	1
4:00-5:00	2	2	2	2	6	1
Total Hour Perday		20	20	20	60	10

Merced Hmong New Year Celebration 2015
 Crow Control Schedule
 Police Officer

Night Time

Time Frame	number of Police officer	December 18 Friday	December 19 Saturday	December 20 Sunday	Total Services hours	Number of hour night
6:00-7:00	2	0	2	0	2	1
7:00-8:00		0	2	0	2	1
8:00-9:00		0	2	0	2	1
9:00-10:00		0	2	0	2	1
10:00-11:00		0	2	0	2	1
11:00-12:00		0	2	0	2	1
Total Hour Perday	2		12		12	6

Merced Hmong New Year Celebration 2015
Crow Control Schedule
Private Security

Day Time

Time Frame	Number of Officer	December 18 Friday	December 19 Saturday	December 20 Sunday	Total Services hours	Number of hour perday
7:00-8:00	4	4	4	4	12	1
8:00-9:00		4	4	4	12	1
9:00-10:00		4	4	4	12	1
10:00-11:00		4	4	4	12	1
11:00- 12:00		4	4	4	12	1
12:00- 1:00		4	4	4	12	1
1:00-2:00		4	4	4	12	1
2:00- 3:00		4	4	4	12	1
3:00-4:00		4	4	4	12	1
4:00-5:00	4	4	4	4	12	1
Total Hour Perday		40	40	40	120	10

Merced Hmong New Year Celebration 2015
Crow Control Schedule
Private Security

Night Time

Time Frame	number of officer	December 18 Friday	December 19 Saturday	December 20 Sunday	Total Services hours	Number of hour night
6:00-7:00	4	0	4	0	4	1
7:00-8:00		0	4	0	4	1
8:00-9:00		0	4	0	4	1
9:00-10:00		0	4	0	4	1
10:00-11:00		0	4	0	4	1
11:00-12:00	4	0	4	0	4	1
6:00 PM - 5:00 AM	1	1	1	0	11	1
6:00 PM - 5:00 AM	1	1	1	0	11	
Total Hour Perday					46	7

October 15, 2015

This is Merced Hmong New Year Schedule.

Same as Last Year. Only three days.

Any question please call me.

Tel # (209)628-9282

Moua Thao

Merced Hmong New Year Chairman

Dont Miss it. Please join Merced for this annual celebration

Merced

Hmong New Year Celebration
Dec. 18 - 20, 2015

ENJOY FOOD & CULTURE

2015 Miss Hmong

Sports Tournament: Charlie Moua
209-384-7384 / 209-769-9679
Beauty Pageant/Dance: Kai Zou Xiang
209-445-8121 / 209-384-7384
Vendor Dr Booth: Gao Cha
209-777-7606 / 209-384-7384
Culture Show / Outside Stage: Fai Dang Lor
209-658-3151 / 209-384-7384

Hosted By
Merced Lao Family Community, Inc.
1748 Miles Court #B Merced CA 95349
209-384-7384

Merced County Fairgrounds
300 Martin Luther King Jr. Way
Merced, CA 95340

Map showing location at Merced County Fairgrounds, Merced, CA 95340, near 99th St and Chain Ave.



ADMINISTRATIVE REPORT

Agenda Item K.8.

Meeting Date: 12/7/2015

Report Prepared by: John C. Sagin Jr, AIA, Principal Architect - Engineering Department

SUBJECT: Cooperative Work Agreement (CWA) Cycle 13 Funds Subject to Lapsing on June 30, 2016

REPORT IN BRIEF

Considers a submittal to the California Department of Transportation (Caltrans) requesting an extension for preliminary funds subject to lapsing for the Bear Creek Bike Path Project and acknowledging completion of the preliminary phase for the Black Rascal Creek Bike Path.

RECOMMENDATION

City Council - Adopt a motion approving the CWA Cycle 13 Submittal, and authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve, as recommended by Staff; or,
2. Approve, subject to conditions other than recommended by Staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
3. Deny; or,
4. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The City of Merced (City) has received notification from the California Department of Transportation (Caltrans) that the Bear Creek Bike Path and Black Rascal Creek Bike Path projects have unliquidated balances that will lapse on June 30, 2016. The City has the option to request a CWA extension if the project has a justified reason for delay, otherwise the City must acknowledge that the funding obligation will lapse.

Bear Creek Bike Path Project:

The City of Merced received \$205,920 in grant funds to complete the preliminary phase of the Bear Creek Bike Path Project. The project has been in an ongoing environmental review status, and has

not yet received the necessary environmental clearance to proceed with design. Specifically, the portion along Bear Creek has not been able to clear the environmental stage. The City has expended \$87,125 in grant funding to date, with an unliquidated balance of \$118,795 for the project.

To avoid further delays, and to ensure the project can proceed with design and construction, the City will be altering the scope of the project by narrowing the project boundaries. The project currently extends from Buena Vista Drive to 16th Street along Bear Creek and the State Route 59 corridor. The revised boundary will be from Buena Vista Drive connecting to the existing concrete bike path behind Walmart. The portion along Bear Creek will be eliminated (attachment 2). The revised project scope was presented to the Bicycle Advisory Commission at their October 27, 2015 meeting.

As the environmental/preliminary phase is ongoing, staff recommends requesting a CWA extension to complete the project (attachment 1). If a request is not approved, the project will not be able to proceed to construction.

Black Rascal Creek Bike Path Project:

The City of Merced received \$132,000 in grant funds to complete the preliminary phase of the Black Rascal Creek Bike Path Project. Fortunately, the costs associated with environmental clearance and preliminary design were well under the anticipated budget, coming in at \$81,575 in grant funding. The construction phase of the Black Rascal Creek project is currently under way, and is anticipated to be completed December 2015.

As the preliminary phase has already been completed, the City must acknowledge the remaining unliquidated balance of \$50,425 in preliminary engineering funds will lapse as of June 30, 2016 for this project (attachment 1).

HISTORY AND PAST ACTIONS

On July 18, 2011, Council adopted a resolution approving State Program Supplement 012-N, accepted and appropriated the \$205,920 CMAQ Grant, and approved the transfer of \$28,080 in matching funds for the preliminary engineering costs associated with the Bear Creek Bike Path Project 111066.

Also at the July 18, 2011 meeting, Council adopted a resolution approving State Program Supplement 011-N, accepted and appropriated the \$132,000 CMAQ Grant, and approved the transfer of \$18,000 in matching funds for the preliminary engineering costs associated with the Black Rascal Creek Bike Path Project 111065.

On September 2, 2014, Council accepted and appropriated the \$388,000 CMAQ Grant and approved the transfer of \$53,000 in matching funds for the construction of the Black Rascal Creek Bike Path Project 111065.

On November 3, 2014, Council awarded the Black Rascal Creek Bike Path Project 111065 to Avison Construction, Inc., in the amount of \$329,435.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. CWA Cycle 13 Submittal
2. Site Plan

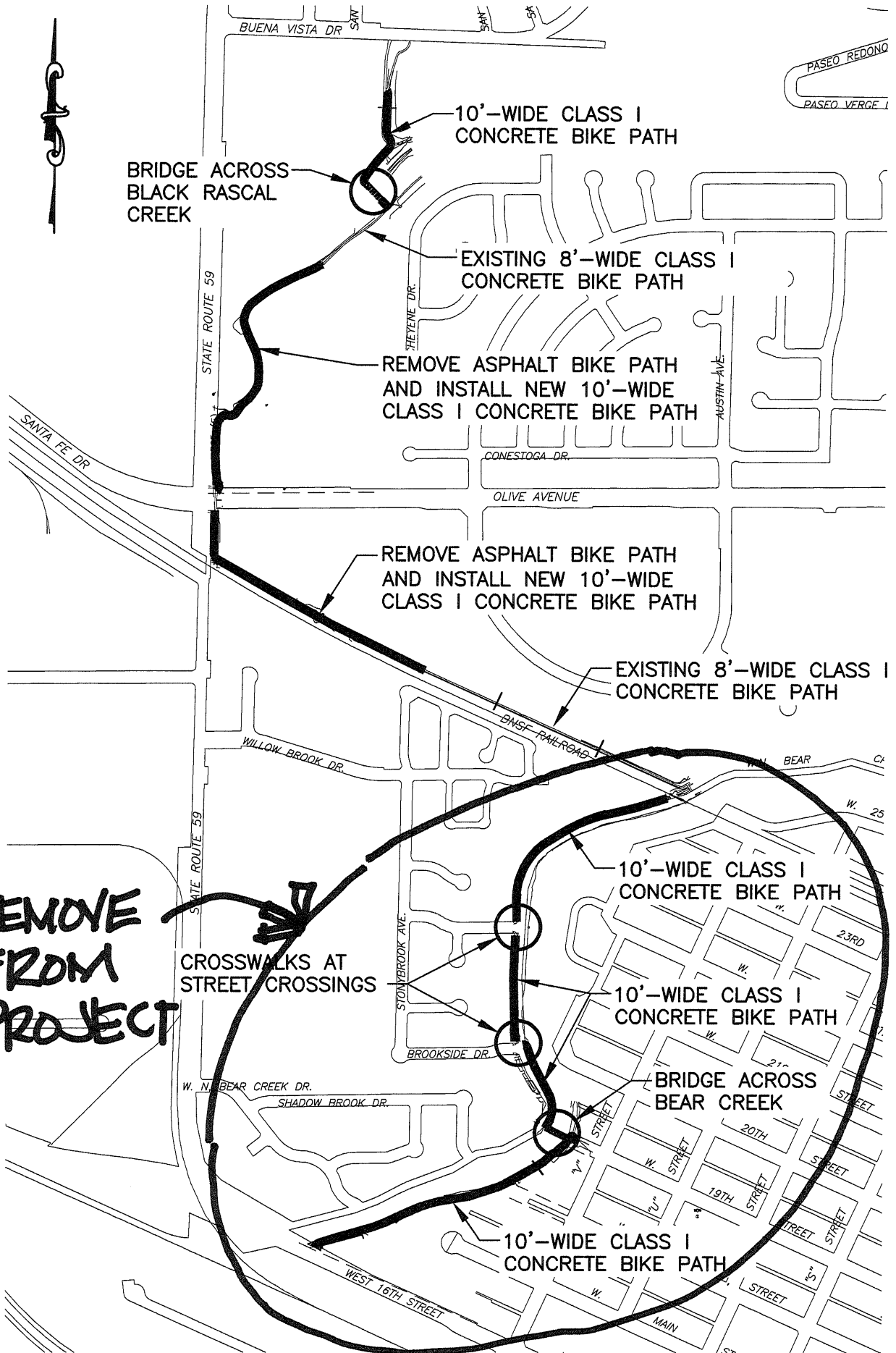
2010-11 Projects Lapsing on June 30, 2016

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
District	Agency	Work Performed and Location	Federal Project #	Project ID	Phase Code	Fund Description	Encumbrance Amount	Reimbursed	Unliquidated Balance	TUF Lapse Date	Requesting CWA (Yes/No)?	Delay Code	Reason for Delay	Obstacles to Future Completion	Consequences if CWA is not approved	Date Funding expended if CWA approved	Contact Name	Contact E-mail & Number
10	Merced	Bike Path from Yosemite Ave to McKee Rd along Black Rascal Crk Corr.	CML-5085(028)	1000020562	S	0890 - Federal Lump Sum	\$ 132,000	\$ 81,575	\$ 50,425	N/A	NO	9	No delay; project is in construction phase.	The preliminary phase is now complete.	N/A	N/A	Ken F. Elwin City Engineer	elwink@cityofmerced.org (209) 385-6898
10	Merced	Bike Path from Buena Vista Dr to 16th St along Bear Crk and SR-59 Corr.	CML-5085(029)	1000020563	S	0890 - Federal Lump Sum	\$ 205,920	\$ 87,125	\$ 118,795	N/A	YES	4 & 7	The project has been in an ongoing environmental review status and has not yet received environmental clearance. To avoid any further delays, and to ensure the project can proceed with design and construction, the City will be altering the scope of the project by narrowing the project boundaries. The revised plans will be submitted to Caltrans once completed.	Environmental clearance may continue to be an obstacle, but with the alteration of the project boundary, the issue should be resolved.	If the CWA is not approved, the project may not be constructed. The environmental issues have been ongoing, and if additional time is not granted, they will not be resolved in time to complete the preliminary design phase.	09/30/16	Ken F. Elwin City Engineer	elwink@cityofmerced.org (209) 385-6898

Agency's Board or Council Signature: _____

Print Name: _____

Date: _____



REMOVE FROM PROJECT



ADMINISTRATIVE REPORT

Agenda Item K.9.

Meeting Date: 12/7/2015

Report Prepared by: *Ken F. Elwin, P.E., City Engineer*

SUBJECT: Third Amendment with Quad Knopf, Inc., for the Preparation of Environmental Technical Studies for the Bear Creek Bike Path Project 111066

REPORT IN BRIEF

Considers approving a \$27,054 amendment with Quad Knopf, Inc., to complete required environmental documents for the future construction of a Class I Bike Path along State Route 59.

RECOMMENDATION

City Council - Adopt a motion approving the Third Amendment to Professional Services Agreement with Quad Knopf, Inc., in the amount of \$27,054 for the Preparation of Environmental Technical Studies; and, authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to conditions other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Charter of the City of Merced, Section 200 et seq.

Services with an estimated value greater than \$28,000 are made by written contract in accordance with Merced Municipal Code, Title 3 - Revenue and Finance, Chapter 3.04.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The City of Merced (City) received a grant from the Congestion Mitigation and Air Quality Improvement Program (CMAQ) for preliminary engineering related to the construction of a Class I Bike Path along State Route 59 and the Bear Creek Corridor, bounded by Buena Vista Drive and 16th Street. As part of the preliminary engineering, the City hired an outside consultant to complete the environmental technical studies required by the California Department of Transportation (Caltrans).

In January 2012, the City entered into an agreement in the amount of \$21,177 with Quad Knopf, Inc., to prepare the environmental documents for the Bear Creek Bike Path Project. After the initial documents were completed and sent to Caltrans, the City received comments from Caltrans which required the documents to be revised and resubmitted. In addition to their comments, Caltrans also required additional documents, including a Water Quality Memorandum and a Noise Technical Memorandum, which were not part of Quad Knopf's original agreement.

Quad Knopf's contract was amended in March 2013, for an additional \$4,800, to complete the revisions and prepare the additional documents. Again, the City received comments from Caltrans regarding the Natural Environmental Study (NES) which required the documents to be revised and resubmitted. In March 2015, Quad Knopf's agreement was amended for an additional \$2,000 to complete the NES revisions.

To avoid further environmental delays, the project scope will be altered by adjusting the project boundaries. The existing boundary extends from Buena Vista Drive to 16th Street. The revised boundary will be from Buena Vista Drive connecting to the existing concrete bike path behind Walmart. The revised project scope was presented to the Bicycle Advisory Commission at their October 27, 2015 meeting.

The proposed Third Amendment is for \$27,054 and includes revising the NES, completion of CEQA documents, and completion of three water permits. To date, Quad Knopf's contract totals \$27,977.

The City Attorney has prepared and approved to form the amendment and it is signed by the consultant (Attachment 4).

HISTORY AND PAST ACTIONS

In connection with preliminary engineering for the project, on July 18, 2011, City Council adopted a resolution approving State Program Supplement 012-N, accepted and appropriated the \$205,920 CMAQ Grant, and approved the transfer of \$28,080 in matching funds.

IMPACT ON CITY RESOURCES

This project was established as a Capital Improvement Project and account 450-1104-637.65-00-111066 contains sufficient funding to complete the project.

ATTACHMENTS

1. Agreement for Professional Services
2. First Amendment
3. Second Amendment

4. Proposed Third Amendment

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 23rd day of January, 2012 by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Quad Knopf, Inc., a California Corporation, whose address of record is 5110 West Cypress Avenue, P.O. Box 3699, Visalia, California 93278, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to prepare environmental technical studies for Bear Creek Bike Path Project ("Project"); and,

WHEREAS, Consultant represents that it possesses the professional skills to provide environmental services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the environmental services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the City Engineer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Twenty-One Thousand One Hundred Seventy-Seven Dollars (\$21,177.00).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, protect, defend, (with legal counsel reasonably acceptable to City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property, or expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation), that arise out of, pertain to, or relate to, the negligence, recklessness, willful misconduct of Consultant or its employees, subcontractors, or agents in the performance of this Agreement. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's

Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to

be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any

attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall

be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: John M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 6/20/11
City Attorney Date

V-9031

2/2/16 PO# 104082
ACCOUNT DATA:

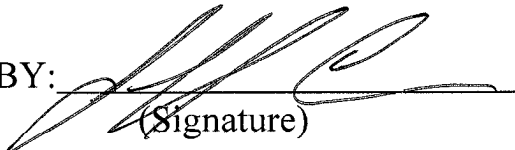
BY: [Signature]
Verified by Finance Officer
Funds Available. MK 1/18/12
450-1104-637-6500 110006
\$21,177.00

CONSULTANT
QUAD KNOFF, INC.,
A California Corporation

BY: 
(Signature)

Janet Freeman
(Typed Name)

Its: CTO
(Title)

BY: 
(Signature)

Jeffery S. Cowart
(Typed Name)

Its: Bakersfield Branch Manager
(Title)

Taxpayer I.D. No. 94-2228472

ADDRESS: 5110 West Cypress Ave.
P.O. Box 3699
Visalia, CA 93278

TELEPHONE: (559) 733-0440

FAX: (559) 733-7821

E-MAIL: janetf@quadknopf.com

①



Quad Knopf

December 5, 2011

Ken Elwin, PE
Associate Engineer
City of Merced
678 W. 18th Street
Merced, CA 95340

Subject: Project #111066 Proposal for Environmental Services for the Bear Creek Bike Path Project

Dear Mr. Elwin:

We appreciate the opportunity to provide a proposal to assist the City with environmental compliance services for the Class I Bike Path Project located from Buena Vista Drive to 16th Street along Bear Creek and SR 99 Corridor. We feel that Quad Knopf's recent Caltrans environmental processing experience can be used to help expedite the environmental permitting and processing of the project.

It is our understanding that:

- The project has an approved PES form which outlines the required technical studies.
- Technical studies need to be completed within 2 months.

Based on our understanding, we have prepared a Firm Overview, Scope of Services, Project Schedule and Cost Estimate, which is included herein as Attachment A. We have also reviewed the sample Agreement for Professional Services and the document is acceptable to Quad Knopf.

We would like to thank you again for the opportunity to submit this letter proposal to you. Please do not hesitate to contact Travis Crawford at (559) 733-0440 or travisc@quadknopf.com should you have any questions or comments.

Sincerely,

Travis L. Crawford, AICP
Senior Environmental Planner

Clifford L. Ronk
Visalia Branch Manager

P110489

EXHIBIT A



ATTACHMENT A

Firm Profile, Scope of Work, Schedule for Services, and Cost Estimate

Firm Profile

Quad Knopf has a diverse staff of approximately 100 employees in four offices – including our headquarters in Visalia and branches in Bakersfield, Fresno, and Roseville. We provide an extensive range of services, including **environmental services, biology, land use planning, civil engineering, geographic information systems, land surveying, landscape architecture, construction management and utility coordination.**

Since 1972, we have successfully partnered with cities, counties, state agencies and other public agencies, to spread the Quad Knopf Effect {QK^e}, which has translated into many long-lasting relationships.

The {QK^e} is a core philosophy we apply to each project. It is the use of our talents and services to develop efficient solutions that have lasting positive impacts for our clients and those who depend on them. It means safer streets, quality homes and schools, and clean water – a better quality of life.

We offer the following:

- ◆ More than 36 years of service throughout California;
- ◆ Key personnel with experience in working for local governments and affiliated agencies;
- ◆ A high proportion of **professionally registered, licensed, and certified staff** in a variety of disciplines (**P.E., PLS, AICP, LEED AP**);
- ◆ A verifiable record of widely varied and successful project experience; and
- ◆ Direct, concentrated involvement of senior associates.

Additionally, Quad Knopf is a three-time honoree of both the Engineering News-Record's listing of the Top 500 Design firms and the Zweig Letter's Hot Firms List.

Caltrans Technical Studies - Project Experience

Mountain Road 319 Bridge Replacement County of Tulare

Quad Knopf was retained by Tulare County to prepare environmental documentation required to replace a structurally deficient bridge in the foothills outside of Three Rivers, CA. Quad Knopf prepared and processed CEQA documentation, NEPA documentation according to Caltrans requirements as well as coordinated a wetlands delineation, biological survey, and applications of permits as required for a California Department of Fish and Game 1602 Stream Alteration Permit, a 401 Clean Water Act Permit through the Regional Water Quality Control Board, and the Central Valley Flood Protection Board.



Yosemite Springs Bridge Replacement

County of Madera

Quad Knopf was retained to prepare CEQA documentation, as well as coordinate wetlands delineations, biological surveys, and applications of permits as required for a California Department of Fish and Game 1602 Stream Alteration Permit, a 401 Clean Water Act Permit through the Regional Water Quality Control Board, and Caltrans project approvals for a bridge replacement project. Additional services for this project included: hydraulic studies and utility coordination for this project.

China Creek Bridge Replacement

County of Madera

Quad Knopf is working directly with Cornerstone Engineering to provide environmental services pertaining to the replacement of the China Creek Bridge on Road 425B. The bridge serves as a primary transportation link for area residents and is being widened from two lanes to three. Quad Knopf is preparing CEQA documentation, coordinating wetlands delineations, biological surveys, and applications of permits as required for California Department of Fish and Game 1602 Stream Alteration Permit, Regional Water Quality Control Board permit, and Caltrans project approvals – which includes coordinating the Preliminary Environmental Scoping (PES) directly with Caltrans.

Plano Bridge Replacement Project

City of Porterville

The City of Porterville is currently in the process of improving the Plano Bridge with funding from Federal Highway Administration, and has retained Quad Knopf to prepare the necessary environmental and hydraulic studies as required by the Preliminary Environmental Study Form. The hydraulic studies included evaluation of the base flood elevation before and after the bridge improvements. Coordination with District 6 included the review and approval of the flood encroachment findings. A technical memorandum summarized the design recommendations in order to address the location hydraulic study, and the floodplain encroachment report.

McAuliff Street Construction & Elderberry Project

Visalia, California

Quad Knopf provided engineering design and Caltrans Encroachment permitting services for the construction of McAuliff Street between Mineral King Avenue and the St. John's River. The project was divided into three phases, with each phase measuring approximately three-quarters of a mile long. Environmental services included a Mitigated Negative Declaration which involved several environmental permitting issues including crossing Mill Creek and Evans Ditch, construction in the streambed, and impacts to elderberry shrubs. Agency coordination involved California Fish and Game, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers. Civil engineering tasks included: preliminary plans, construction plans, specifications, utilities relocation, traffic control design and sign and signal modification, design survey, right-of-way location and monument establishment, traffic analysis and design, right-of-way acquisition maps and legal description, Caltrans Encroachment permits, and Mill Creek Ditch bridge culvert structural plans and cost estimates.

Santa Fe Street and Ben Maddox Overcrossings
Visalia, California

The City of Visalia and the Tulare County Association of Governments (TCAG) completed a Project Study Report (PSR) for the State Route 198 corridor. The study was undertaken as a part of the City planning process to provide adequate roadway capacity throughout the corridor.

The Santa Fe Avenue Overcrossing requires removal of an existing railroad underpass and the construction of a new five-lane overcrossing as part of the extension of Santa Fe Avenue from Noble Avenue to Mineral King Avenue across SR 198. The project includes a precast concrete girder structure type to allow for appropriate vertical clearance while minimizing the grade changes at Nobel and Mineral King. Public acceptance for the project was gained via presentation of renderings at a Public Works Commission meeting. Additionally, a special presentation was given to Caltrans to obtain increased funding.

The Ben Maddox overcrossing structure, which widens the roadway from five lanes to eight across State Route 198, will be constructed in two stages. In the first stage, traffic will use the existing bridge while the new portion of the bridge is constructed. Then traffic will be shifted to this new portion, and barrier replacement, bridge deck treatment concrete overlay, and raised median will be constructed in the second stage.

Visalia Road Construction
Farmersville, California

The project entails the widening of Visalia Road/Caldwell Avenue, from State Route 99 on the west to Orange Avenue in Exeter on the east, to a five-lane arterial road. An EIS/EIR was prepared to evaluate a portion through the City of Farmersville from one-eighth of a mile west of Virginia Avenue to one-fourth of a mile east of Brundage Avenue.

Funding for the project was obtained from the Tulare County Association of Governments (TCAG) and State Transportation Implementation Plan (STIP) funding. With those funding sources in place, environmental documentation was prepared pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), and included a Mitigated Negative Declaration and a Categorical Exclusion with Technical Studies.

Bike Path - Project Experience**City of Fresno Bicycle Master Plan**

Quad Knopf was retained by the City of Fresno to prepare CEQA documentation for the City-wide bicycle Master Plan. The document was certified by the City Council in October 2010.

City of Visalia Bicycle Master Plan

Quad Knopf was retained by the City of Visalia to prepare CEQA documentation for the City-wide bicycle Master Plan. The document was certified by the City Council in March 2011.

Project Team

Key Members

Travis L. Crawford, AICP
Senior Environmental Planner / Project Manager

- ◆ Member, American Institute of Certified Planners
- ◆ B.A., English, 1999, San Diego State University
- ◆ Graduate Level Paralegal Certificate, Environmental Law, University of San Diego

As a Senior Environmental Planner, Mr. Crawford serves as the primary point of contact for numerous environmental documents and is responsible for maintaining the project's schedule and budget. He oversees the daily operations of the team, ensuring efficiency and competency. Mr. Crawford also uses his training as a Certified Paralegal to ensure that all work produced by the firm is legally defensible. Mr. Crawford has a wealth of experience in CEQA documentation, regulatory compliance analysis, and legal analysis. He has prepared CEQA documents for road improvement projects, bridge replacement projects, multiple local and college school districts, hospital districts, as well as residential and commercial developments. Additionally, he has provided technical services and special research to various clients that include: cities, counties, LAFCo, redevelopment agencies, and private developers.

Miguel A. Barcenas, P.E.
Senior Civil Engineer

- ◆ B.S., Civil Engineering, Cal Poly State University 2002, San Luis Obispo
- ◆ Professional Engineer, State of California, No. 67700
- ◆ Member, American Society of Civil Engineering
- ◆ Member, American Public Works Association

As a Senior Civil Engineer, Mr. Barcenas will prepare and coordinate all drainage/hydraulic studies required by the regulating agency for review and approval of the proposed project. Mr. Barcenas' professional background includes nine years of civil engineering experience designing storm drainage systems, floodway channels, water distribution systems, flexible pavement design, rails to trails, and federal correctional institutions. Additionally, Mr. Barcenas has been involved in various improvement projects dealing with drainage mitigations measures requiring approval from agencies such as Caltrans, Army Corp of Engineers, Central Valley Flood Control District, Kern County Flood Control, and FEMA.

Curtis Uptain
Principal Wildlife Biologist

- ◆ M.A., Zoology, California State University, Fresno
- ◆ B.A., Biological Sciences, California State University, Fresno
- ◆ Certified Associate Wildlife Biologist, Wildlife Society
- ◆ NEPA Certification, University of California, Davis

- ◆ CEQA Certification, University of California, Davis
- ◆ Certified in Habitat Evaluation Procedures, USFWS

As Senior Biologist, Mr. Uptain oversees and coordinates all necessary biological tasks needed to meet applicable regulations and agency approvals. Mr. Uptain specializes in conducting biological resource inventories and studies in the southwestern United States. He has more than 20 years experience working with federally and state-listed endangered species. Additionally, Mr. Uptain has been responsible for documenting the results of research and surveys in numerous technical reports such as environmental assessments, environmental impact reports, environmental impact statements, biological opinions, mitigation and monitoring plans, habitat management plans, and habitat conservation plans. Mr. Uptain currently holds, or has previously held, federal and state permits to trap and handle a number of threatened and endangered species.



Scope of Work

Introduction

Quad Knopf, Inc. (consultant) will provide the City of Merced (City) with Environmental Consulting Services related to the scope of services for the subject project as described herein.

Project Description

The City is proposing to design and construct a Class I Bike Path located from Buena Vista Drive to 16th Street along Bear Creek and SR 99 Corridor. The project has an approved Preliminary Environmental Study (PES) form which outlines the required Caltrans technical studies. The project qualifies for a Categorical Exclusion with Technical Studies.

Scope of Services

Environmental Technical Studies

We anticipate the following environmental technical studies will be required:

Task 1: NES / BA

Quad Knopf biologists will conduct database searches and a biological survey to determine the nature and extent of impacts to any potential biological resources. Quad Knopf will prepare the Natural Environmental Study and the Biological Assessment reports according to Caltrans and agency required format. The reports will include a discussion of water quality impacts, wetlands and invasive plants.

Note: If special-status species are identified on the project site which require additional surveys/documentation, Quad Knopf is available to perform such services for an additional fee.

Task 2: Floodplain

Preparation of the Floodplain permits will be completed using the existing base flood elevation currently published in the Flood Insurance Rate Map (FIRM). A preliminary pavement section will be determined and modeled in HEC-RAS using the existing cross sectional surface shown in the FEMA's flood study. It does not appear that major modifications have been made to the existing floodway since the flood study was published; therefore no additional topography has been budgeted for this task. The proposed improvements will be modeled under pre-developed and post-developed condition using the adopted flood study and will be the basis for preparing the following reports: 100-year Base Flood Elevation Report, Location Hydraulic Study, Floodplain Evaluation Report, and Summary Floodplain Encroachment Report. Two milestones have been budgeted for this task, which includes a preliminary package of the drainage reports, and a final drainage report with a coordination meeting if comments need to be addressed through Caltrans District 10.

Task 3: Visual Resources

Quad Knopf will prepare the Short Version Visual Impact Assessment. This will include a discussion on the existing visual resources and the project impacts on those resources. Caltrans guidelines on preparation of the Visual Impact Assessment will be followed.

Note: This proposal assumes that no visual simulations will be required.

Task 4: Land Use and Community Impacts

Quad Knopf will prepare a Technical Memorandum discussing land use issues resulting from the project. This will include landscape removal at Bear Creek Drive.

Task 5: Historical and Cultural Resources Report

Quad Knopf's subconsultant Sierra Valley Cultural Planning will prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) to satisfy Caltrans requirements. This includes pre-field research and database search; field survey; and report preparation.

Note: This proposal assumes that no more than two cultural resources will be identified in the project area.

Task 6: Additional Analysis

According to the PES Form, the project will require analysis related to construction noise impacts and hazardous materials. Quad Knopf will conduct a records search to determine if there are any recorded areas involving hazardous materials / hazardous waste. Quad Knopf will also prepare a technical memorandum which discusses noise impacts and reduction measures.

Task 7: Permit Applications

Quad Knopf will prepare permit applications for the City of Merced for the following permits: the California Department of Fish and Game 1600 Stream Alteration Permit, U.S. Army Corps of Engineers Nationwide Permit (assuming the project qualifies for a Nationwide Permit), and Regional Water Quality Control Board 401 and NPDES Permit. Please note that the permit applications can be submitted to the regulatory agencies only after the CEQA document has been certified by the City.



Project Schedule

The proposed schedule is contingent upon coordination with the City’s design engineer and City staff review/processing times. All reports can be submitted within 50 days of contract authorization.

Task	Estimated Number of Days After Authorization
Environmental Technical Studies	
Task 1 NES, Minimal Impact	50
Task 2 Floodplain	50
Task 3 Visual Resources	50
Task 4 Land Use/Comm. Impacts	50
Task 5 Historical/Cultural Reports	50
Task 6 Additional Analysis	50
Task 7 Permit Applications*	50*

** Permit Processing*

Processing of the CDFG 1600 and the RWQCB 401 permits are likely in the range of 45 – 90 days. For the ACOE permit, if design and construction results in less than one-tenth of an acre of temporary and permanent impacts within the Ordinary High Water Mark (OHWM), then a non-reporting nationwide permit is applicable. If impacts are greater than one-tenth of an acre (but less than one-quarter of an acre) within the OHWM, the City will be required to prepare a nationwide permit application that must be submitted to the ACOE. Processing is in the range of 3 to 6 months, but can be longer. Impacts greater than one-quarter of an acre require an Individual Permit, which can take a year or longer to process. Quad Knopf can work with the design engineer to calculate impacts in order to develop the most cost-effective and efficient solution.



Project Fee

The tasks are proposed to be completed on a fixed fee basis.

Task	CK Fee
Environmental Technical Studies	
Task 1 NES, Minimal Impact	\$5,415
Task 2 Floodplain	\$2,300
Task 3 Visual Resources	\$945
Task 4 Land Use	\$945
Task 5 Historical/Cultural Reports	\$4,758
Task 6 Additional Analysis	\$1,620
Task 7 Permit Applications*	\$5,194*
Total	\$21,177

* Please also note that there are mandated permit fees associated with the 1600 Stream Alteration Permit and the 401 Permit and potentially other permits. These fees are due at the time the permits are submitted to the respective agencies (fees are determined based on the actual project funding amount and project footprint). For a project of this size, fees are likely to be in the range of \$800+ for the 401 permit and \$3,000+ for the 1600 permit (this fee is calculated based on a percentage of total project cost). These fees are subject to change and are not included in the estimate for this project.

**FIRST AMENDMENT TO AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into this 8 day of March, 2013, by and between the City of Merced, a California Charter Municipal Corporation (“City”), and Quad Knopf, Inc., a California Corporation, whose address of record is P.O. Box 3699, Visalia, California 93278,, (“Consultant”).

WHEREAS, City is undertaking a project to prepare environmental technical studies for Bear Creek Bike Path Project (“Project”); and,

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services (“Agreement”) dated January 23, 2012; and,

WHEREAS, City and Consultant desire to amend said Agreement to provide for additional services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, agree as follows:

1. Section 22, “ADDITIONAL SCOPE OF SERVICES,” is hereby added to the Agreement to read as follows:

“22. ADDITIONAL SCOPE OF SERVICES. The Scope of Services is amended in accordance with the changes outlined in Exhibit 1 attached hereto.”

2. Section 23, “ADDITIONAL COMPENSATION,” is hereby added to the Agreement to read as follows:

“23. ADDITIONAL COMPENSATION. The City shall pay to Consultant the not to exceed additional sum of Four Thousand Eight Hundred Dollars (\$4,800.00) for the additional services described in Exhibit 1 and in accordance with the fee schedule set forth on Exhibit 1, attached hereto.”

3. Except as herein amended, the Agreement dated January 23, 2012, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: John M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: [Signature] 2/14/13
City Attorney Date

212116
ACCOUNT DATA:


BY: _____
Verified by Finance Officer
See attached.

Account Number: 450-1104-637-65-00 111066

Amount: \$4,800.00


VERIFIED

BY: 
Finance Officer

FINANCE ENTRY	
Contract No:	<u>212116</u>
Vendor Number:	<u>9031</u>
P.O. Number:	<u>104082</u>
Funds Available:	<u>Yes</u>
	<u> 03/05/13</u>


WV

CONSULTANT
QUAD KNOPF, INC.,
A California Corporation

BY: 
(Signature)

Janel Freeman
(Typed Name)

Its: CEO
(Title)

BY: 
(Signature)

Michael D. Knopf, PE 30579
(Typed Name)

Its: President / CEO
(Title)

Taxpayer I.D. No. 94-2228472

ADDRESS: P.O. Box 3699
Visalia, CA 93278

TELEPHONE: (559) 733-0440

FAX: (559) 733-7821

E-MAIL: janelf@quadknopf.com

Attachment A Scope of Work

Introduction

The following tasks are required to finish the Caltrans-required technical studies for each project.

Black Rascal

Task 1: NES, Minimal Impact

Quad Knopf will revise and update the NESMI based on Caltrans' comments provided in October 2012. This task will require input from the City to help define specific project footprint, excavation, construction staging, type of construction equipment, etc.

To date, there are no additional studies being requested by Caltrans and no other tasks require a contract amendment.

Time to complete: 2 weeks

Bear Creek

Task 1: NES/BA

Quad Knopf will revise and complete the NES and the BA based on Caltrans' comments. This task will require input from the City pertaining to precise bridge locations and footprints in order to fully quantify impacts. In addition, Quad Knopf biologists were required to visit the site multiple times because of GIS/location changes provided by the City. This resulted in cost overruns that are shown in the cost estimate.

Time to complete: 2 weeks, once information is received from the City.

To date, there are no additional tasks in Quad Knopf's existing scope of work that require a contract amendment. However, Caltrans has requested the following items that were not included in Quad Knopf's scope of work:

Task 8: Water Quality Memorandum

Quad Knopf will prepare the Responses to Caltrans Interim Scoping Questionnaire for Water Quality Issues. This will analyze water quality impacts, drainage, and receiving bodies of water.

Time to complete: 2 weeks

Task 9: Noise Technical Memorandum

Quad Knopf will prepare a Noise Technical Memorandum based on the template provided by Caltrans. This will address construction noise.

Time to complete: 2 weeks

Cost Estimate

The above described tasks will be performed on a fixed fee basis as identified below.

Black Rascal

Task	Cost
1. NES, Minimal Impact	\$2,340
TOTAL COSTS	\$2,340

Bear Creek

Task	Cost
1. NES/BA	\$2,690
8. Water Quality	\$1,055
9. Noise Memo	\$1,055
TOTAL COSTS	\$4,800

**SECOND AMENDMENT TO AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS SECOND AMENDMENT TO AGREEMENT is made and entered into this 25th day of MARCH, 2015, by and between the City of Merced, a California Charter Municipal Corporation (“City”), and Quad Knopf, Inc., a California Corporation, whose address of record is P.O. Box 3699, Visalia, California 93278,, (“Consultant”).

WHEREAS, City is undertaking a project to prepare environmental technical studies for the Bear Creek Bike Path Project (“Project”); and

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services (“Agreement”) dated January 23, 2012, and a First Amendment dated March 8, 2013; and

WHEREAS, City and Consultant desire to amend said Agreement to provide for additional services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, agree as follows:

1. Section 24, “ADDITIONAL SCOPE OF SERVICES,” is hereby added to the Agreement to read as follows:

“24. ADDITIONAL SCOPE OF SERVICES. The Scope of Services is amended in accordance with the changes outlined in Exhibit 1 attached hereto.”

2. Section 25, “ADDITIONAL COMPENSATION,” is hereby added to the Agreement to read as follows:

“25. ADDITIONAL COMPENSATION. The City shall pay to Consultant the not to exceed additional sum of Two Thousand Dollars (\$2,000.00) for the additional services described in Exhibit 1 and in accordance with the fee schedule set forth on Exhibit 1, attached hereto.”

3. Except as herein amended, the Agreement dated January 23, 2012, and First Amendment dated March 8, 2013, shall remain in full force and effect.

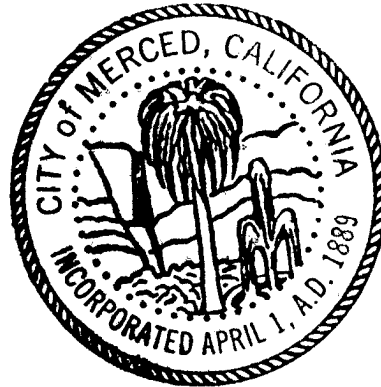
IN WITNESS WHEREOF, the parties have caused this Second Amendment to Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: John M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: Ken Reed 2/19/15
City Attorney Date

1-9031
212116 PO#: 117917
ACCOUNT DATA:

BY: Jeri L. Albrecht
Verified by Finance Officer

Funds Available. use 3/23/15
450-1104-637-6500 111066
\$ 2,000.00 W

Scope of Work

Introduction

The following tasks are required to complete the Caltrans-required Natural Environment Study (NES).

Task: NES

Revise and update the NES based on the new bike path alignment and comments from Caltrans. This assumes that no further revisions will be required. Document will be transmitted electronically.

Time to Complete: 10 days from NTP

Deliverable: One (1) electronic copy and one (1) hard copy

Cost Estimate

Task: Completion of NES

\$ 2,000

EXHIBIT 1

CONSULTANT
QUAD KNOPF, INC.,
A California Corporation

BY: Amber Adams
(Signature)

Amber Adams

(Typed Name)

Its: Branch Manager
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. _____

ADDRESS: P.O. Box 3699
Visalia, CA 93278

TELEPHONE: (559) 733-0440

FAX: (559) 733-7821

E-MAIL: _____

**THIRD AMENDMENT TO AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS THIRD AMENDMENT TO AGREEMENT is made and entered into this ___ day of _____, 2015, by and between the City of Merced, a California Charter Municipal Corporation (“City”), and Quad Knopf, Inc., a California Corporation, whose address of record is P.O. Box 3699, Visalia, California 93278, (“Consultant”).

WHEREAS, City is undertaking a project to prepare environmental technical studies for the Bear Creek Bike Path Project (“Project”); and

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services (“Agreement”) dated January 23, 2012, a First Amendment dated March 8, 2013, and a Second Amendment dated March 25, 2015; and

WHEREAS, City and Consultant desire to amend said Agreement to provide for additional services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, agree as follows:

1. Section 26, “ADDITIONAL SCOPE OF SERVICES,” is hereby added to the Agreement to read as follows:

“26. ADDITIONAL SCOPE OF SERVICES. The Scope of Services is amended in accordance with the changes outlined in Exhibit 1 attached hereto.”

2. Section 27, “ADDITIONAL COMPENSATION,” is hereby added to the Agreement to read as follows:

“27. ADDITIONAL COMPENSATION. The City shall pay to Consultant the not to exceed additional sum of Twenty-Seven Thousand Fifty-Four Dollars (\$27,054.00) for the additional services described in Exhibit 1 and in accordance with the fee schedule set forth on Exhibit 1, attached hereto.”

3. Except as herein amended, the Agreement dated January 23, 2012, First Amendment dated March 8, 2013, and Second Amendment dated March 25, 2015, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Third Amendment to Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

BY: Ken Rydell 11/10/15
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
QUAD KNOPF, INC.,
A California Corporation

BY: 
(Signature)

Michael Knopf
(Typed Name)

Its: President
(Title)

BY: 
(Signature)

Janel Freeman
(Typed Name)

Its: CFD
(Title)

Taxpayer I.D. No. 94-2228472

ADDRESS: P.O. Box 3699
Visalia, CA 93278

TELEPHONE: (559) 733-0440

FAX: (559) 733-7821

E-MAIL: janel@quadknopf.



November 4, 2015

Mr. Ken Elwin
City of Merced
678 West 18th Street
Merced, California 95340

Subject: Final Scope and Costs for Redefined Bear Creek Bike Path Project

Dear Mr. Elwin:

You recently advised us that the City has determined that the Bear Creek Bike Path project (Project) has been redefined to remove the southern section along Bear Creek. Quad Knopf's participation in the Project began in 2012 when we conducted biological field reconnaissance surveys along two non-contiguous sections of proposed bike paths. The northern section extends approximately 800 feet west along La Mirada Drive, continues north along SR-59 and then east along the south side of Black Rascal Creek to a proposed bike/pedestrian bridge, where it continues north to its terminus with the existing Black Rascal path at Buena Vista Drive. The southern section was originally proposed to be on the east side of N. Bear Creek Drive. However, because it was determined that impacts would be greater on the east side of N. Bear Creek Drive – between Creekside and Brookside – than the west side, the path was moved to the west side of N. Bear Creek Drive. This change meant that the open sections of the Merced Lateral Canal that are adjacent to the west side of N. Bear Creek Drive would need to be undergrounded to make room for the bike path.

Technical documents, determined by Caltrans to be necessary in compliance with NEPA, were drafted and submitted to Caltrans, using the original northern section, and revised southern section of N. Bear Creek Drive. These technical documents are in various stages of review/revision, but because the Project description has been redefined to exclude the southern section, will need to be revised once again and resubmitted to Caltrans.

Per your request of October 22, 2015, we have attached a description, status, and cost estimates for the documents needed to complete the Project. We understand that there is limited time to complete these documents and have them approved by the various agencies before you must begin the construction phase. Please do not hesitate to contact me if you have questions or concerns regarding this amendment.

Sincerely,

Ginger White
Senior Planner

Enclosures: Attachment A: Scope of Work and Costs

\\ws-fs-01\projects\Projects\2012\120022\CONTRACTS\Amendment 4-No. portion-revised CR 11.4.15.docx

6051 North Fresno Street, Suite 200 • Fresno, California 93710 • Tel (559) 449-2400 • Fax (559) 435-2905



Quad Knopf

Attachment A Scope of Work

The following tasks are needed to complete the Caltrans-required technical studies for NEPA compliance, CEQA compliance, and permitting from the California Department of Fish and Wildlife.

Task 1 NEPA – Technical Documents

Task 1.1 BA

Revise and update the BA based on the new Project Description. All figures and text will need to be revised to eliminate the southern section of the Project along Bear Creek. This document was submitted to Caltrans, and revised twice based on their comments. The cost estimate is based on the assumption that no additional revisions will be required. Document will be transmitted to the City electronically.

Time to Complete: 14 days from NTP
Deliverable: One (1) electronic copy and (1) hard copy
Cost: \$2,500

Task 1.2 NES

Revise and update the NES based on the new Project Description. This document must be consistent with the project description, figures, and analysis presented in the BA. It also contains additional information and figures regarding resources in addition to biological resources. Although some of the information from the BA can be utilized for both documents, in the NES all figures and text will need to be revised to eliminate the southern section of the Project along Bear Creek. A draft NES document was submitted to Caltrans, and revised once based on their comments. Caltrans submitted a second round of comments in March 2015, and the NES was partially revised, but has been on hold until additional information on the status of permits became available. The cost estimate is based on the assumption that no additional revisions will be required. Document will be transmitted electronically.

Time to Complete: 14 days from NTP
Deliverable: One (1) electronic copy and (1) hard copy
Cost: \$3,650

Task 1.3 Noise

The Noise Technical Memorandum was drafted and submitted to Caltrans in June 2014. Caltrans has indicated that they provided comments in September 2014; however, we have no

record of these comments. The Memo will need to be revised to eliminate the southern section of the Project, and to incorporate Caltrans' comments.

The cost estimate is based on the assumption that no additional revisions will be required once the existing comments from Caltrans have been incorporated. Document will be transmitted electronically.

Time to Complete: 7 days from NTP
Deliverable: One (1) electronic copy and (1) hard copy
Cost: \$450.00

Task 1.4 Floodplain and Hydraulic Study

The Location Hydrologic Study and Floodplain Encroachment Report was prepared and submitted to Caltrans. They have indicated that they submitted comments to the City in December 2013. Quad Knopf does not have a record of these comments. The Report will need to be revised to eliminate the southern section of the Project, and to incorporate Caltrans' comments.

Time to Complete: 10 days from NTP
Deliverable: One (1) electronic copy and (1) hard copy
Cost: \$450.00

Task 1.5 Cultural Resources Documents

The APE was prepared and submitted to Caltrans, and was later revised. Caltrans provided comments on the APE, the HRSR and the Cultural Resources Survey Report in October 2012. Quad Knopf will prepare a revised APE that includes only the remaining northern section of the Project. Our subcontractor, Sierra Valley Cultural Planning will need to address Caltrans' comments and revise the HRSR and Survey Report to include only the redefined Project.

Time to Complete: 14 days from NTP
Deliverable: One (1) electronic copy and (1) hard copy
Cost: \$1,200.00

Task 1.6 Visual Impact Analysis

The Minor VIA was prepared and submitted to Caltrans in April 2012. They have indicated that they submitted comments to the City in December 2013. Quad Knopf does not have these comments. The Report will need to be revised to eliminate the southern section of the Project in the figures, photos and text, and to incorporate Caltrans' comments.

Time to Complete: 10 days from NTP
Deliverable: One (1) electronic copy and (1) hard copy
Cost: \$450.00

Task 1.7 Water Quality Memo

The Water Quality Memo has been drafted, but because final information regarding permits was not available, it had not been submitted to Caltrans. The Memo will need to be revised to eliminate the southern section of the Project in the figures, photos and text.

Time to Complete: 10 days from NTP
Deliverable: One (1) electronic copy and (1) hard copy
Cost: \$450.00

Task 2 CEQA – Technical Documents

Task 2.1 Initial Study and Mitigated Negative Declaration

The completion of the Initial Study and Mitigated Negative Declaration is needed in compliance with CEQA because mitigation measures are needed to reduce impacts to less than significant for biological and water resources. The CEQA process requires consultation with Native American Tribes (contacting tribal members recommended by NAHC and allowing at least 30 days for response), for a minimum total of approximately 60 days to complete the draft. The draft would then need to be released for public comment for a period of 30 days. Finally, the document would need to be considered by the Planning Commission, and adopted by the City Council. Schedule and cost assumes the City will provide one set of comments to the draft IS/MND within seven (7) days of submittal of Administrative Draft. Quad Knopf will prepare project Notices for public comment period and State Clearing House.

Time to Complete: 120 days from NTP through Adoption (minimum, based on meeting dates)
Deliverable: One (1) electronic copy of Administrative Draft; one (1) electronic and two (2) hard copies of Draft for public review; one (1) electronic and five (5) hard copies of Final document for public review and adoption. Additionally fifteen (15) electronic copies of Draft and Final will be prepared as CDs for submission to State Clearinghouse.
Cost: \$15,000.00

Task 3 Permitting Process

Task 3.1 CDFW 1600 Permit

The removal of the section of the bike path along Bear Creek eliminates the need to underground the MID canal. Therefore, permit applications with US Army Corps and the Regional Water Quality Control Board are no longer necessary. Because the northern section of the Project includes riparian habitat, a California Department of Fish and Wildlife (CDFW) 1600 permit, otherwise known as a Streambed Alteration Agreement, is needed. The 1600 permit applicant cannot be submitted to the agency until the CEQA environmental documents have been completed. Other technical documents, such as Hydrology Reports, may also be needed. The permit and its accompanying documents will be compiled on a CD and submitted to the appropriate agency.

Time to Complete: 20 days from NTP: submission to agency upon adoption of the IS/MND
Deliverable: CD to include permit application, IS/MND, and technical documents as required by the agency
Cost: \$2,904.00
(Estimated Fee to Agency is \$4,912 which is not included in our cost)

Cost Estimate – All Tasks

Task	Cost
Task 1.1 BA	\$ 2,500
Task 1.2 NES	\$ 3,650
Task 1.3 Noise	\$ 450
Task 1.4 Floodplain and Hydraulic Study	\$ 450
Task 1.5 Cultural Resources Documents	\$ 1,200
Task 1.6 Visual Impact Analysis	\$ 450
Task 1.7 Water Quality Memo	\$ 450
Task 2.1 CEQA Document	\$15,000
Task 3.1 CDFW 1600 Permit	\$ 2,904
Grand Total	\$27,054



ADMINISTRATIVE REPORT

Agenda Item K.10.

Meeting Date: 12/7/2015

Report Prepared by: Julie Nelson, Associate Planner, Planning Department

SUBJECT: First Amendment to the Purchase and Sale Agreement for 2322 G Street

REPORT IN BRIEF

Amend the Purchase and Sale Agreement for 2322 G Street to allow additional time to complete Phase One of the Pro Lube construction project.

RECOMMENDATION

City Council - Adopt a motion approving the First Amendment to the Purchase and Sale Agreement for 2322 G Street allowing additional time for the project to be completed and authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve as recommended by staff; or,
2. Approve subject to modifications by the City Council; or,
3. Deny; or,
4. Refer back to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Charter Section 200 authorizes the City Council to enter into and amend agreements with other entities.

DISCUSSION

On October 20, 2014, the City Council entered into an agreement with Pro Lube Incorporated for the purchase of the property located at 2322 G Street (refer to the location map at Attachment 1 and the agreement at Attachment 2). Pro Lube Inc. planned to construct a new Pro Lube building (with sandwich shop); three other new buildings, and remodel the existing car wash and vacuum center (refer to the site plan at Attachment 3).

The Purchase and Sale Agreement called for the project to be constructed in two phases. Phase One consisted of the remodel of the existing carwash and vacuum center, and the construction of the Pro Lube building (and sandwich shop) and Phase Two would be the remainder of the buildings. Section 9 of the agreement specified that construction was to begin within 15 months of the close of escrow (December 22, 2014). Based on this, construction of the project should start no later than March 22, 2016. However, due to unforeseen delays, Pro Lube Inc, does not expect to be able to

meet this timeframe. According to their letter (Attachment 4), the greatest cause of the delay is due to the Phase 1 Environmental Report obtained from the City upon purchasing the property not being acceptable to their lenders. In addition, their contractor, Skip George with Commercial Construction, Pro Lube Inc., has recommended waiting to break ground until after the rainy season. Therefore, Pro Lube, Inc. has requested an amendment to the Purchase and Sale Agreement to postpone the start of construction on the Pro Lube building until June 22, 2016.

In their letter, they estimated the plans for the Pro Lube and sandwich shop building (referred to as Phase 2) would be submitted for building permit review by November 15, 2015, and the Auto Shop and Pro Lube Offices (referred to as Phase 3) would be submitted by December 15, 2015. After consulting with their design team (Golden Valley Engineering), the dates for submitting these plans have been modified. Golden Valley Engineering has committed to having the plans submitted for the Pro Lube and sandwich shop building by December 1, 2015, and the plans for the other buildings by January 3, 2016. Plans were submitted for the remodel of the existing car wash on October 27, 2015 (see plans at Attachment 5).

According to the letter from Pro Lube, Inc., they have already made some site improvements (cleaned debris, demolished the house on the site, and installed security cameras) and they would continue to maintain the property in a clean and operational manner until the time construction begins. Therefore, City staff would not be responsible for any cleaning or maintenance on the site.

The First Amendment to the Purchase and Sale Agreement found at Attachment 6, allows 24 months from the close of escrow (December 22, 2014) for the start of construction. Although this is slightly longer than requested by Pro Lube, given the prediction for a longer and heavier than normal rainy season, additional time may be needed to get the project under way. Staff feels the additional time would ensure no additional amendments would be needed to the agreement. Pro Lube, Inc., their design team, and contractor are committed to getting this project going as soon as possible.

IMPACT ON CITY RESOURCES

There would be no impacts on City resources due to the extended period of time for construction to begin.

ATTACHMENTS

1. Location Map
2. Purchase and Sale Agreement
3. Site Plan
4. Letter from Pro Lube, Inc.
5. Plans for car wash remodel
6. First Amendment to Purchase and Sale Agreement



24TH

SUBJECT
SITE

23RD

G

196



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into this 20th day of OCTOBER, 2014, by and between the City of Merced, a California Charter Municipal Corporation (“Seller”) and Pro Lube Incorporated, a California Corporation, whose address of record is P.O. Box 235, Catheys Valley, California 95306 (“Buyer”).

WHEREAS, Seller owns the real properties identified as 2322 G Street in the City of Merced, California (Assessor’s Parcel Number 034-011-025) and more fully described in Attachment “A” and shown on the map provided at Attachment “B,” which are attached hereto and incorporated herein by this reference, (hereinafter the “Subject Property”); and,

WHEREAS, Buyer desires to purchase the Subject Property for the location of a Pro-Lube facility, Pro-Lube corporate office, retail spaces, and dog grooming center (hereafter, the “Project”); and,

WHEREAS, The sale of the Subject Property, which the City hereby declares as surplus, and the development of Buyer’s proposed business on the Subject Property will create new jobs and will help the local economy.

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Buyer and Seller do agree as follows:

SECTION 1. PURCHASE & SALE. Seller agrees to sell and Buyer agrees to purchase the Subject Property pursuant to the terms of this Agreement.

SECTION 2. PURCHASE PRICE. The purchase price for Subject Property shall be Four Hundred Eighty Thousand Dollars (\$480,000.00) for approximately 1.9 ± acres (the “Purchase Price”), which includes the existing buildings located thereon. Buyer is acquiring the Subject Property and buildings in “as-is” condition and subject to the existing leases for the car wash and Laundromat. Seller represents that true and correct copies of the leases are attached hereto as Attachments “C” and “D”, and that said leases will not be

amended on or after the effective date of this Agreement through the close of escrow.

a. Deposit by Buyer: Within five (5) days from the opening of escrow, Buyer shall place a deposit of Ten Thousand Dollars (\$10,000) into escrow.

b. Deposit of Additional Funds Before Close of Escrow: At or before the close of escrow, Buyer shall deposit the sum of Two Hundred Ninety Thousand Dollars (\$290,000) into escrow to be allocated against the Purchase Price at the close of escrow.

b. Financing of Balance of Purchase Price: At or before the close of escrow, Buyer shall execute a promissory note and deed of trust in favor of the Seller in the amount of One Hundred Eighty Thousand Dollars (\$180,000.00), with an annual interest rate thereon equal to the 11th District cost of funds plus 200 basis points, adjusted every July and payable in equal monthly installments for a period of ten (10) years. Seller agrees to subordinate its \$180,000 loan to a construction loan in an amount not to exceed One Million Dollars (\$1,000,000) that the Buyer obtains at or before the close of escrow on the Subject Property. Provided that Buyer is in full compliance with the terms of this Agreement and the Merced Municipal Code, Seller also agrees to subordinate its \$180,000 loan to permanent financing for the Subject Property obtained no later than thirty (30) months from the close of escrow.

SECTION 3. ESCROW. Escrow shall open on the Property within five (5) days at a title company in Merced, California selected by Seller, and shall close on or before December 31, 2014, subject to the terms and conditions of this Agreement. Closing costs, including escrow costs, title insurance and transfer tax, shall be evenly split between Buyer and Seller.

SECTION 4. ASSIGNMENT OF LEASES. At the close of escrow for the Subject Property, Seller shall assign the leases for the car wash and Laundromat (Attachments "C" and "D") to Buyer.

SECTION 5. APPROVAL OF TITLE REPORT. Within five (5) days from the opening of escrow, Seller shall provide a preliminary title report to Buyer. Buyer shall have ten (10) days thereafter in which to approve the preliminary title report. If Buyer does not approve one or more of the exceptions of the preliminary

title report and Seller refuses to remove said exception(s), then Buyer shall have the right to terminate escrow.

SECTION 6. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, transferees, successors, assignee, partners, and legal representatives. Neither this Agreement nor any part thereof shall be assignable except with the prior written consent of the other party hereto. Any attempted assignment or delegation of the rights and responsibilities under this Agreement not executed in writing by the other party hereto shall constitute a material breach of this Agreement and shall be null and void.

SECTION 7. SUBJECT TO OTHER OBLIGATIONS. This Agreement is conditioned upon Buyer's compliance with the requirements of the Merced Site Plan Approval Committee and/or the Merced Planning Commission. At the close of this transaction, Buyer will be issued a Grant Deed containing restrictions and easements, including the Seller's right to repurchase the Subject Property pursuant to Section 9 of this Agreement.

SECTION 8. ZONING AND PERMITTED USES. The Subject Property is currently zoned General Commercial (C-G). The proposed "Project" (as described in Attachment "E" attached hereto) is a permitted use within the General Commercial (C-G) land use district of the City of Merced. The Subject Property shall be used for the purposes shown on the Site Plan at Attachment "F", subject to Conditional Use Permit approval as required by Chapter 20.52 (Interface Regulations) of the Merced Municipal Code. If Buyer does not obtain a Conditional Use Permit for the Subject Property on or before December 17, 2014, Buyer may terminate the escrow and the Buyer and Seller shall evenly split the costs of escrow through the date of termination of the escrow.

SECTION 9. COMMENCEMENT OF CONSTRUCTION, SCHEDULE, AND SELLER'S RIGHT TO REPURCHASE SUBJECT PROPERTY. Buyer agrees to obtain all necessary building permits and commence construction of Phase One of the Project as described in Attachment "E" within fifteen (15) months of the close of escrow and to thereafter diligently pursue its completion. It is hereby agreed that failure of Buyer to commence construction of the Phase One of the Project within said fifteen (15) month period shall give Seller the right and option to repurchase the Subject Property. The price for Seller's option to repurchase shall be the purchase price paid by the original Buyer without interest, appreciation, or reimbursement for any improvements, costs, expenses, or

City, County, or other taxes or assessments levied or assessed against the Subject Property. Prior to completion of the main building structure(s) required for the Project on the Subject Property, Buyer agrees not transfer title to the Subject Property to another person or entity without Seller's prior written consent, which may be withheld at Seller's sole and complete discretion.

SECTION 10. NOTICE. All notices required or available to be sent pursuant to this Agreement shall be delivered by either first-class certified mail, return receipt requested, and properly addressed with correct postage fully paid thereon or by personal delivery to the individuals designated above at the address designated below. All mailed notices shall be deemed delivered within three (3) business days of deposit in the U.S. Mail and personal delivery shall be deemed delivered upon actual delivery thereof at the addresses set forth below:

SELLER: City Clerk
City of Merced
678 West 18th Street
Merced, California 95340

With a copy to: City Attorney
City of Merced
678 West 18th Street
Merced, California 95340

BUYER: Pro Lube Incorporated
P.O. Box 235
Catheys Valley, California 95306

SECTION 11. INTERPRETATION. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the Sections and Subsections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 12. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this

document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 13. RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Seller and Buyer or their agents, employees or contractors. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

SECTION 14. NO THIRD PARTY BENEFICIARIES. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the Agreement or of any duty, covenant, obligation, or undertaking established herein.

SECTION 15. ENTIRE AGREEMENT. This Agreement is a fully integrated agreement that contains the complete, final, entire, and exclusive expression of the agreement and understanding of the parties hereto. This Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Agreement.

SECTION 16. AMENDMENTS IN WRITING. This Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the parties hereto and approved and adopted as required by law. Any attempted amendment not in compliance with the provisions of this Section shall be null and void.

SECTION 17. WAIVER. Any waiver by either party of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligation

under this Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.

SECTION 18. COUNTERPARTS. This Agreement may be executed in counterparts and when each party has signed and delivered at least one such counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to the Seller and Buyer. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

SECTION 19. AUTHORITY TO EXECUTE. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their governmental or business entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

SECTION 20. REAL ESTATE COMMISSION. Buyer has retained the services of Loren Gonella of Coldwell Banker Commercial in its proposed acquisition of the Subject Property from Seller. Buyer acknowledges and agrees that Seller shall not be responsible to pay any real estate commission relating to Buyer's proposed acquisition of the Subject Property. Buyer shall be fully responsible for compensating Coldwell Banker Commercial for this transaction.

SECTION 21. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

SECTION 22. USE OF LOCAL CONTRACTORS FOR CONSTRUCTION AND LOCAL RESIDENTS AS EMPLOYEES. Buyer agrees to use its best efforts to use local contractors for the construction of improvements on the Subject Property and local residents for the jobs that will be created on the Subject Property once said construction is completed.

[Continued on next page]

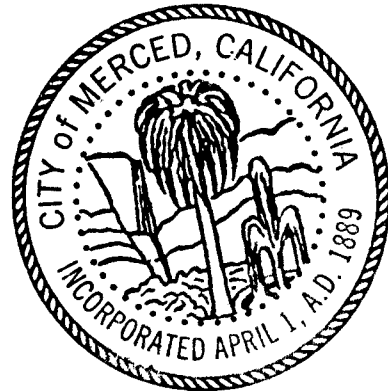
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

SELLER:
CITY OF MERCED
A California Charter Municipal
Corporation

BY: Jan M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 10/2/14
City Attorney Date

V-17312

214906 PO#: 116360
ACCOUNT DATA:


BY: [Signature]
Verified by Finance Office

Funds Available. MUC 10/23/14
Est. Escrow fee \$ 9,600.00
001-2002-572-1700 ✓

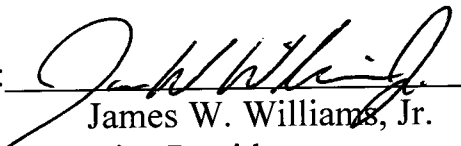
Ref 10/2/14

Est.
Escrow
fee

BUYER:
PRO LUBE INCORPORATED,
a California Corporation

BY: 
Michael J. Hausmann
President

TELEPHONE: 209-769-7080
E-MAIL: prolubeinc@sti.net

BY: 
James W. Williams, Jr.
Vice President

TELEPHONE: 209-769-7890
E-MAIL: prolube@sti.net

Taxpayer I.D. No. 77-2122378

ADDRESS: P.O. Box 235
Catheys Valley, CA 95306

LEGAL DESCRIPTION

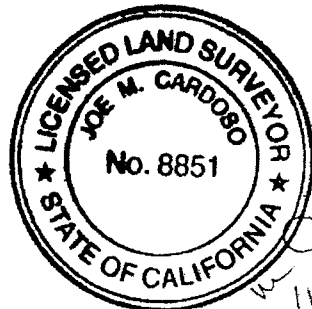
A tract of land situated in a portion of Lot 1 and in a portion of Lot 2, as said lots are delineated on that certain map entitled "MERCED HOME TRACT", filed for record on October 11, 1912, in the office of the County Recorder of Merced County in Volume 5, of Official Plats, at Page 36, said tract of land being more particularly described as follows:

Beginning at a point on the northeasterly line of said Lot 1, lying distant thereon, S65°20'00"E, a distance of 40.84 feet from the north corner thereof, said point also being on the southeasterly line as described in that certain Grant Deed to the City of Merced, recorded June 11, 2012 as Document Number 2012-020493, Merced County Records; thence S65°20'00"E, along the northeasterly line of said Lot 1 and said Lot 2, a distance of 294.23 feet to the easterly corner of said Lot 2; thence S24°40'00"W, along the southeasterly line of said Lot 2, a distance of 165.00 feet; thence N65°20'00"W, parallel with and 165.00 feet southwesterly from the northeasterly line of said Lot 2, a distance of 111.69 feet to the southeasterly line of said Lot 1; thence S24°40'00"W, along the southeasterly line of said Lot 1, a distance of 173.00 feet to a point on the northeasterly line of said Grant Deed to the City of Merced; thence along the northeasterly and southeasterly line of said Grant Deed to the City of Merced the following courses and distances:

- 1) N65°20'00"W, parallel with and 12.00 feet northeasterly from the southwesterly line of said Lot 1, a distance of 75.07 feet to the beginning of a tangent curve concave to the northeast, having a radius of 120.00 feet;
- 2) thence westerly along said curve, through a central angle of 15°41'38", an arc distance of 32.87 feet;
- 3) thence N49°38'22"W, a distance of 71.72 feet;
- 4) thence N56°05'59"W, a distance of 41.47 feet;
- 5) thence N32°08'52"E, a distance of 143.58 feet;
- 6) thence N30°17'48"E, a distance of 165.91 feet to the POINT OF BEGINNING.

The above-described tract of land is delineated on Exhibit B, attached hereto, and made a part hereof.

The above-described tract of land contains 1.93 Acres, more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



ATTACHMENT A

2ND

SANTA FE

24TH

Subject Site

G

23RD

F

N

ATTACHMENT B



LEASE AGREEMENT

THIS LEASE made this 17th day of December 2012, by and between the City of Merced, a California Municipal Charter Corporation (“Lessor”), and Vivath Bounlangsy and Somboun Bounlangsy, whose address of record is 4094 St. Remy Court, Merced, California 95348 (“Lessee”).

WHEREAS, The Lessor is the owner of the Carriage Center Car Wash located at 2340 “G” Street, on the southeast corner of “G” Street and BNSF railroad tracks, Merced, California (APN 034-011-002); and,

WHEREAS, Lessee desires to lease the self service car wash equipment and associated real estate on the Site, as that term is defined below.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the Lessor and Lessee do hereby agree as follows:

1. DEFINITIONS:

a. “Buildings” and “Site” is defined as the buildings and structures associated with Carriage Center Car Wash located at 2340 “G” Street, on the southeast corner of “G” Street and BNSF railroad tracks, Merced, California, and identified on the attached Exhibit A.

b. “Site” is defined as the area surrounding the buildings as identified on the attached Exhibit A.

c. “Parcel” is defined as the entirety of the parcel known as APN 034-011-002.

2. RENT. Lessor agrees to offer the Buildings, Site and associated equipment located at 2340 “G” Street, Merced, California for lease, and Lessee agrees and accepts the offer of the lease for the monthly rent set forth in this Section and for all of the terms and conditions of this Lease. Rent shall be payable on the 1st of each month, in advance, and shall be Eight Hundred Dollars (\$800.00) per month for year one. Rent shall increase by three percent (3%) annually thereafter.

LEASE AGREEMENT

THIS LEASE made this 17th day of December 2012, by and between the City of Merced, a California Municipal Charter Corporation ("Lessor"), and Vivath Bounlangsy and Somboun Bounlangsy, whose address of record is 4094 St. Remy Court, Merced, California 95348 ("Lessee").

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WHEREAS, Lessee desires to lease the self service car wash equipment and associated real estate on the Site, as that term is defined below.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the Lessor and Lessee do hereby agree as follows:

1. DEFINITIONS:

a. "Buildings" and "Site" is defined as the buildings and structures associated with Carriage Center Car Wash located at 2340 "G" Street, on the southeast corner of "G" Street and BNSF railroad tracks, Merced, California, and identified on the attached Exhibit A.

b. "Site" is defined as the area surrounding the buildings as identified on the attached Exhibit A.

c. "Parcel" is defined as the entirety of the parcel known as APN 034-011-002.

2. RENT. Lessor agrees to offer the Buildings, Site and associated equipment located at 2340 "G" Street, Merced, California for lease, and Lessee agrees and accepts the offer of the lease for the monthly rent set forth in this Section and for all of the terms and conditions of this Lease. Rent shall be payable on the 1st of each month, in advance, and shall be Eight Hundred Dollars (\$800.00) per month for year one. Rent shall increase by three percent (3%) annually thereafter.

All rents shall be paid to Lessor or its authorized agent at the following address: 678 West 18th Street, Merced, California, 95340, or at such other place as may be designated by Lessor from time to time. In the event rent is not paid within ten (10) days after the due date, Lessee agrees to pay a late charge of One Hundred Dollars (\$100.00) plus interest at twelve (12%) percent per annum on the delinquent amount. Lessee further agrees to pay One Hundred Dollars (\$100.00) for each dishonored bank check. The late charge period is NOT a grace period, and Lessor is entitled to make written demand for any rent not paid when due.

3. **TERM.** The term of this Lease shall commence upon mutual execution of this Lease and after Lessee provides to Lessor satisfactory evidence of hazard and liability insurance required by this Lease and pays the security deposit required by Section 23 of this Lease. This shall be a month-to-month lease, with a maximum length of two (2) years from mutual execution, and may be terminated by either party upon thirty (30) days written notice by Lessee. Lessor may notify Lessee with ninety (90) days written notice to end Lease.

4. **USE.** The Buildings and Site are to be used for the operation of a self service car wash and related uses and for no other purpose without prior written consent of Lessor. Lessee shall not commit any waste upon the Buildings and/or Site, or any nuisance or act that may disturb the quiet enjoyment of any tenant of the Parcel. Lessee shall provide Lessor with a copy of a profit and loss statement upon thirty (30) days of the annual commencement date.

5. **USES PROHIBITED.** Lessee shall not use any portion of the Buildings and Site for purposes other than those specified. Specifically, the following are excluded uses: pawn shops, tattoo parlors, skateboard shops, adult businesses, payday loan businesses, billiard or pool halls, dance halls, mobile food vendors, or bail bond businesses.

6. **ASSIGNMENT AND SUBLETTING.** Lessee shall not assign this Lease or sublet any portion of the Leased Space without prior written consent of the Lessor. Any such assignment or subletting without consent may, at the option of Lessor, constitute a breach of this Lease.

7. **MAINTENANCE, REPAIRS, ALTERATIONS.** Unless otherwise indicated, Lessee acknowledges that the Buildings and Site are in good order and repair. Lessee shall, at its own expense, maintain the Buildings and Site in a good and safe condition, including plate glass, electrical wiring, trade fixtures and systems, plumbing and heating installations, and any other system or equipment.

The Buildings and Site shall be surrendered at termination of the Lease in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, except the roof, exterior walls and structural foundations, which shall be maintained by Lessor.

8. **ENTRY AND INSPECTION.** Lessee shall permit Lessor or Lessor's agents to enter the Buildings and Site at reasonable times and upon reasonable notice for the purpose of inspecting the Buildings and Site, and shall permit Lessor, at any time within thirty (30) days prior to the expiration of this Lease, to place upon the Buildings any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the Buildings and Site to inspect the Buildings and Site at reasonable times.

9. **LESSEE'S INSURANCE.** Lessee, at its expense, shall maintain plate glass and public liability insurance, including bodily injury and property damage, insuring Lessee and Lessor with minimum coverage as follows: \$1 million combined personal injury and property damage.

Lessee shall provide Lessor with a Certificate of Insurance showing Lessor and its officers, officials, employees and agents as additional insureds. The policy shall require thirty (30) DAYS' WRITTEN NOTICE TO LESSOR PRIOR TO CANCELLATION OR MATERIAL CHANGE OF COVERAGE.

Lessee, at its expense, shall maintain on all its personal property, improvements, and alterations in, on, or about the Buildings and Site, a policy of standard fire and extended coverage insurance with vandalism and malicious mischief endorsements, of at least 100% of their full replacement value. The proceeds from any such policy shall be used by Lessee first for the restoration of Lessee's improvements or alterations and any remaining amount for the replacement of personal property.

Lessor shall maintain on the Buildings a policy of standard fire and extended coverage insurance which shall name Lessee as an additional insured, but shall provide that any proceeds shall be payable to Lessor.

10. **UTILITIES.** Lessee shall be responsible for the payment of all electrical, gas, water, sewer, garbage services, and any other utility service for the Buildings.

11. **BUSINESS LICENSE.** Lessee shall maintain a valid, non-delinquent City of Merced Business License throughout the term of this Lease and shall timely file all required quarterly business license statements and timely pay all fees thereunder to the City of Merced Finance Department.

12. **CAM/TAXES/INSURANCE.** Lessee shall be responsible for the cleaning and maintenance of all space within the Buildings and Site as defined and shown on approved plans. Lessee shall keep the Buildings and Site clean of dirt and debris. This Lease is net of taxes, utilities, and insurance.

13. **SIGNS.** Lessor reserves the exclusive right to the roof, side, and rear walls of the Buildings, except that signs may be erected by Lessee if in compliance with City of Merced ordinances and shall be subject to review and written approval as tenant improvements. Any installed sign on the Buildings or Site shall be of the highest quality materials and shall comply with City of Merced ordinances. In the event Lessee or Lessee's agents attaches any sign to the exterior of the Buildings, without the approval of the Lessor, Lessee agrees upon relinquishing the tenancy to cause the same to be removed, the exterior repaired, and the area under the former sign to be re-painted to match the color of the surrounding exterior.

14. **ABANDONMENT OF PREMISES.** Lessee shall not vacate or abandon the Buildings or Site at any time during the term of this Lease. If Lessee abandons or vacates the Buildings or Site, or is dispossessed by process of law or otherwise, any personal property belonging to Lessee left on the Buildings or Site shall be deemed to be abandoned at the option of Lessor.

15. **CONDEMNATION.** If any part of the Buildings or Site is condemned for public use and a part remains which is susceptible for occupation by Lessee, this Lease shall, as to the part taken, terminate as of the date the condemnor acquires possession. Lessee shall be required to pay such proportion of the rent for the remaining term as the value of the Leased Space remaining bears to the total value of the Buildings and Site at the date of condemnation; provided, however, that Lessor may at its option, terminate this Lease as of the date the condemnor acquires possession. In the event that the Buildings and Site are condemned in whole, or the remainder is not susceptible for use by the Lessee, this Lease shall terminate upon the date which the condemnor acquires possession. All sums which may be payable on account of any condemnation shall belong solely to the Lessor; except that Lessee shall be entitled to retain any amount awarded to it for its goodwill, trade fixtures, or moving expenses.

16. **TRADE FIXTURES.** Any and all improvements made to the Buildings and Site during the term of this Lease shall belong to the Lessor. All equipment, trade fixtures and items presently at the Site shall remain the property of the Lessor. Lessee agrees to keep said fixtures and equipment in good and reasonable working condition. Personal property non-affixed to the Building or Site that was brought to the Site by Lessee shall be the property of the Lessee.

17. **DESTRUCTION OF BUILDINGS OR SITE.** In the event of a partial destruction of the Buildings or Site during the term of this Lease from any cause, Lessor shall promptly repair the Buildings or Site, provided that such repairs can be reasonably made **WITHIN THIRTY (30) DAYS**. Such partial destruction shall not terminate this Lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs interferes with the business of Lessee on the Buildings or Site. If the repairs cannot be made **WITHIN THIRTY (30) DAYS**, this Lease may be terminated at the option of either party by giving written notice to the other party **WITHIN THE THIRTY (30) DAY PERIOD**.

18. **HAZARDOUS MATERIALS.** Lessee shall not use, store, or dispose of any hazardous substances upon the Buildings or Site, except the use and storage of such substances that are customarily used in Lessee's business and are in compliance with all environmental laws. Hazardous substances means any hazardous waste, substance or toxic materials regulated under any environmental law or regulations applicable to the Buildings or Site.

19. **INSOLVENCY.** The appointment of a receiver, an assignment for the benefits of creditors, or the filing of a petition in bankruptcy by or against Lessee shall constitute a breach of this Lease by Lessee.

20. **DEFAULT.** In the event of any breach of this Lease, Lessor may, at its option, terminate the Lease and recover from Lessee:

- a. The worth at the time of award of the unpaid rent, which had been earned at the time of termination;
- b. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided;

- c. The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and,
- d. Any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result there from.

Lessor may, in the alternative, continue this Lease in effect, as long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all of Lessor's rights and remedies under the Lease, including the right to recover the rent as it becomes due under the Lease. If said breach of Lease continues, Lessor may, at any time thereafter, elect to terminate the Lease.

Nothing contained herein shall be deemed to limit any other rights or remedies which Lessor may have.

21. **SECURITY.** A security deposit of Eight Hundred Dollars (\$800.00) shall secure the performance of the Lessee's obligations and shall be paid upon execution of this Lease. Lessor may, but shall not be obligated to apply all or portions of the deposit on account for Lessee's obligations. Any balance remaining upon termination shall be returned to Lessee.

22. **DEPOSIT REFUNDS.** The balance of all deposits shall be refunded **WITHIN THREE (3) WEEKS** (or otherwise as required by law) from the date possession is delivered to Lessor, together with a statement showing any charges made against such deposits by Lessor.

23. **ATTORNEY'S FEES AND COSTS.** In any action or proceeding involving a dispute between Lessor and Lessee arising out of this Lease, the prevailing party shall be entitled to reasonable attorney's fees and costs.

24. **WAIVER.** No failure of Lessor to enforce any term of this Lease shall be deemed to be a waiver. No purported waiver of any provision of this Lease shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

25. **NOTICES.** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at 4094 St. Remy Court, Merced, California 95348, or to Lessor at 678 West 18th Street, Merced, California 95340, with a copy to City Attorney, City of Merced, 678 West 18th Street, Merced, California 95340 or at such other place as may be designated by the parties from time to time. Notice shall be effective FIVE (5) DAYS AFTER MAILING, or immediately upon personal delivery.

26. **HOLDING OVER.**

- a. Any holding over after the expiration of this Lease, with the written consent of Lessor, shall become a month-to-month tenancy at a monthly rent of One Thousand Dollars (\$1,000.00), and is payable in advance and otherwise subject to the terms of this Lease, as applicable, until either party shall terminate the same by giving the other party THIRTY (30) DAYS WRITTEN NOTICE.
- b. In the event it becomes necessary for Lessor to evict Lessee from the Buildings and Site, Lessee agrees to reimburse Lessor for any and all costs and expenses, including attorney fees, and to be liable to Lessor for any and all damages, including damages Lessor incurs as to third parties under subsequent Lease Agreements for the Buildings or Site.
- c. Lessee agrees to waive any and all relocation benefits or payments that may arise due to the termination of this Lease.

27. **TIME.** Time is of the essence of this Lease.

28. **HEIRS, ASSIGNS, SUCCESSORS.** This Lease is binding upon and inures to the benefit of the heirs, assigns, and successors of the parties.

29. **LESSOR'S LIABILITY.** In the event of a transfer of Lessor's title or interest to the Premises during the term of this Lease, Lessee agrees that the grantee of such title or interest shall be substituted as the Lessor under this Lease, and the original Lessor shall be released of all further liability; provided, that all deposits shall be transferred to the grantee.

30. **IMPROVEMENTS SUPPLIED BY LESSEE.** The Buildings and Site are supplied as is by Lessor. All improvements are to be supplied by Lessee, including but not limited to demising walls, lighting, floor and wall finishes, trade

fixtures or equipment, ceilings, and all other improvements shall remain in place and remain property of the Lessor upon termination of the Lease. Should Lessee desire any modifications, Lessee shall obtain all necessary permits and complete all building modifications utilizing current building codes. All improvements are subject to Lessor's written consent.

31. **COVENANTS AND AGREEMENTS.** There shall be no visible bars or grates over or behind any window visible from a public street or right-of-way. Any permanent signage must comply with City of Merced ordinances, must be of high quality materials, and shall not use tempera paint. Signage shall be installed consistent with Section 15 of this Lease. Lessee shall sweep or wash daily and otherwise keep clean the Site. Lessee agrees to paint over any graffiti that may occur within twenty-four (24) hours. If Lessee is in violation of any of the covenants and agreements, Lessor may enter and remedy the violation after forty-eight (48) hours of written notice. Lessee shall be responsible for reimbursing Lessor for actual costs incurred plus fifteen percent (15%) for any such action.

32. **TRIPLE NET.** This Lease is net of taxes, utilities, and insurance. Lessee's occupancy of Buildings and Site may give rise to a possessory interest tax, and Lessee agrees to pay such tax or other property taxes as may be levied.

33. **ORDINANCES AND STATUTES.** Lessee shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force or which may later be in force.

34. **LESSOR'S WARRANTY OF TITLE.** Lessor represents and warrants that:

- a. Lessor is or will be the sole owner in fee simple of the Site and the Buildings thereon and has full right and power to grant the estate demised and to execute and perform this Lease;
- b. The Buildings and Site will remain free and clear of all encumbrances that could adversely affect Lessee's leasehold estate; and
- c. The intended use of the Buildings and Site as stated herein is permitted by all applicable zoning laws and regulations.

35. **QUIET ENJOYMENT.** Lessor covenants and agrees that so long as Lessee observes and performs all the agreements and covenants required of it

hereunder, Lessee shall peaceably and quietly have, hold, and enjoy the Buildings and Site for the term of the Lease without any encumbrance or hindrance by Lessor.

36. **INDEMNIFICATION.** Lessee shall save, protect, defend (with counsel selected by Lessor), and hold Lessor and its officers, officials, employees and agents harmless from and indemnify Lessor against any and all claims, demands, suits, judgments, costs, and expenses asserted by any person or persons, including agents or employees of Lessee or Lessor, by reasons of death or injury to persons, or loss or damage to property, including but not limited to claims for dangerous conditions of Lessor's property, resulting from Lessor's activities upon the Buildings and Site, or as a result of the Lessee's use of the Buildings and Site.

37. **DAMAGE.** Lessee shall be responsible for any damage to Lessor's Buildings and Site which may result from Lessee's activities conducted on the Premises.

38. **EXHIBITS.** The Exhibits attached hereto are incorporated herein by this reference as if set forth in full.

39. **COVENANTS.** The Lessee herein covenants by and for itself, its heirs, executors, administrators, assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions.

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, or national origin in the Lease, sublease, transfer, assignment, use, occupancy, tenure, or enjoyment of the Buildings and Site herein leased nor shall the Lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Buildings and Site herein leased.

40. **MISCELLANEOUS PROVISIONS.**

(a) *Entire Agreement.* This Lease represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Lease.

(b) *Section Headings.* The section headings contained in this Lease are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(c) *No Reliance on Other Parties.* All parties to this Lease declare that, prior to the execution of this Lease, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection in order that they might intelligently exercise their own judgment in evaluating the contents of this Lease and making the decision to execute it. The parties each represent and acknowledge that in executing this Lease, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Lease with regard to the subject matter, basis or effect of this Lease.

(d) *Construction.* The provisions of this Lease shall be liberally construed to effectuate its purpose. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Lease. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

(e) *Governing Law.* The validity and interpretation of this Lease shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws. Any action pursuant to this Lease shall be brought exclusively in state courts for Merced County.

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IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the date first above written.

LESSOR:
CITY OF MERCED
A California Charter Municipal
Corporation

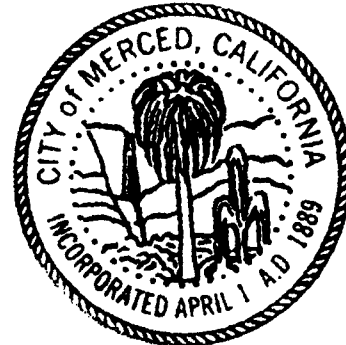
BY: John M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: Jamie Ancou
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Ken Byrd 11/21/12
City Attorney Date



212397
ACCOUNT DATA:

BY: Rudley P. ...
Verified by Finance Officer
No funds to encumber as of 12-20-12
Mkt 25893 12/20/12 RG WK

LESSEE:
VIVATH BOUNLANGSY AND
SOMBOUN BOUNLANGSY

BY: 
Vivath Bounlangsy

BY: 
Somboun Bounlangsy

ADDRESS: 4094 St. Remy Court
Merced, CA 95348

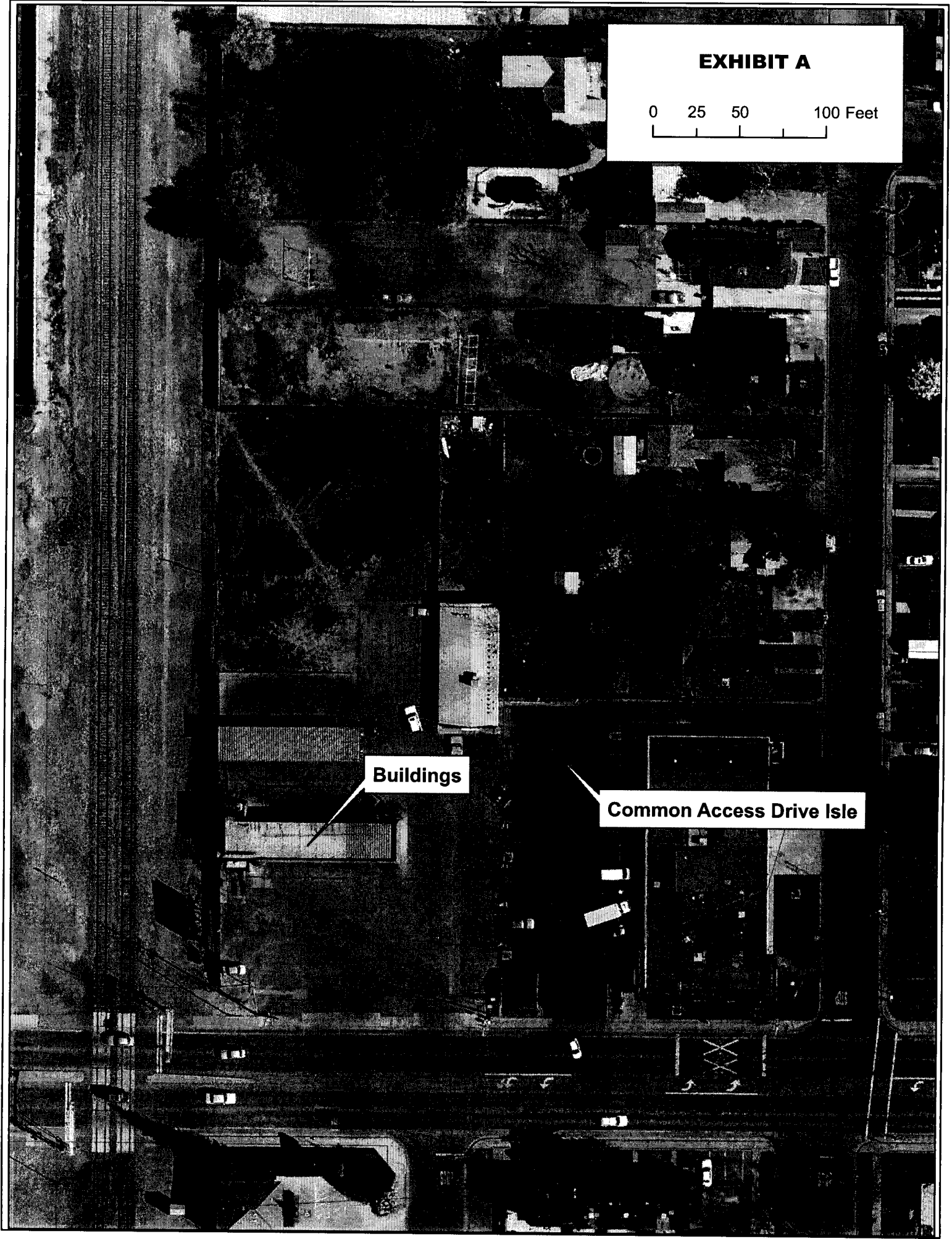
TELEPHONE: (209) 385-0123
FAX N/A
E-MAIL: vbounlangsy@yahoo.com

EXHIBIT A

0 25 50 100 Feet

Buildings

Common Access Drive Isle



LEASE AGREEMENT

THIS LEASE made this 16th day of April 2012, by and between the City of Merced, a California Municipal Charter Corporation ("Lessor"), and Vivath Bounlangsy and Somboun Bounlangsy, whose address of record is 4094 St. Remy Court, Merced, California 95348 ("Lessee").

WHEREAS, The Lessor is the owner of the "New Tech Coin-O-Matic" located at 2330 "G" Street, on the southeast corner of "G" Street and BNSF railroad tracks, Merced, California (APN 034-011-002); and,

WHEREAS, Lessee operates a coin operated laundry at that location and desires to lease certain underlying real estate.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the Lessor and Lessee do hereby agree as follows:

1. DEFINITIONS:

a. "Buildings" is defined as the buildings and structures associated with coin operated laundry located at 2330 "G" Street, on the southeast corner of "G" Street and BNSF railroad tracks, Merced, California, and identified on the attached Exhibit A.

b. "Site" is defined as the area surrounding the buildings as identified on the attached Exhibit B.

c. "Parcel" is defined as the entirety of the parcel known as APN 034-011-002, less the portion of the parcel that will be utilized for the "G" Street Undercrossing Project.

2. RENT. Lessor agrees to offer the Buildings and Site located at 2330 "G" Street, Merced, California for lease, and Lessee agrees and accepts the offer of the lease for the monthly rent set forth in this Section and for all of the terms and conditions of this Lease. Rent shall be payable on the 1st of each month, in advance, and shall be in the following amounts:

Upon mutual execution of this Lease: \$650.00

Rent shall increase by three percent (3%) annually thereafter. Past due rents shall be paid in full within ten (10) days of the execution of this Lease. Non-payment of such past due rents shall result in default of the Lease.

All rents shall be paid to Lessor or its authorized agent at the following address: 678 West 18th Street, Merced, California, 95340, or at such other place as may be designated by Lessor from time to time. In the event rent is not paid within ten (10) days after the due date, Lessee agrees to pay a late charge of One Hundred Dollars (\$100.00) plus interest at twelve (12%) percent per annum on the delinquent amount. Lessee further agrees to pay One Hundred Dollars (\$100.00) for each dishonored bank check. The late charge period is NOT a grace period, and Lessor is entitled to make written demand for any rent not paid when due.

3. TERM. The term of this Lease shall commence upon mutual execution of this Lease and after Lessee provides to Lessor satisfactory evidence of hazard and liability insurance required by this Lease and pays the security deposit required by Section 23 of this Lease. This shall be a month-to-month lease and may be terminated by Lessee upon thirty (30) days written notice and by Lessor upon ninety (90) days written notice.

4. USE. The Buildings and Site are to be used for the operation of a coin operated laundry and related uses and for no other purpose without prior written consent of Lessor. Lessee shall not commit any waste upon the Buildings and/or Site, or any nuisance or act that may disturb the quiet enjoyment of any tenant of the Parcel.

5. USES PROHIBITED. Lessee shall not use any portion of the Buildings and Site for purposes other than those specified. Specifically, the following are excluded uses: pawn shops, tattoo parlors, skateboard shops, adult businesses, payday loan businesses, billiard or pool halls, dance halls, mobile food vendors, or bail bond businesses.

6. RESERVED.

7. ASSIGNMENT AND SUBLETTING. Lessee shall not assign this Lease or sublet any portion of the Leased Space without prior written consent of the Lessor. Any such assignment or subletting without consent may, at the option of Lessor, constitute a breach of this Lease. Lessor reserves the right to assign this Lease without approval of Lessee.

8. ACCESS. Lessee acknowledges and agrees that all access will occur from 23rd Street.

9. MAINTENANCE, REPAIRS, ALTERATIONS. Unless otherwise indicated, Lessee acknowledges that the Buildings and Site are in good order and repair. Lessee shall, at its own expense, maintain the Buildings and Site in a good and safe condition, including plate glass, electrical wiring, trade fixtures and systems, plumbing and heating installations, and any other system or equipment. The Buildings and Site shall be surrendered at termination of the Lease in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, except the roof, exterior walls and structural foundations, which shall be maintained by Lessor.

10. ENTRY AND INSPECTION. Lessee shall permit Lessor or Lessor's agents to enter the Buildings and Site at reasonable times and upon reasonable notice for the purpose of inspecting the Buildings and Site, and shall permit Lessor, at any time within thirty (30) days prior to the termination of this Lease, to place upon the Buildings any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the Buildings and Site to inspect the Buildings and Site at reasonable times.

11. LESSEE'S INSURANCE. Lessee, at its expense, shall maintain plate glass and public liability insurance, including bodily injury and property damage, insuring Lessee and Lessor with minimum coverage as follows: \$1 million combined personal injury and property damage.

Lessee shall provide Lessor with a Certificate of Insurance showing Lessor and its officers, officials, employees and agents as additional insureds. The policy shall require thirty (30) DAYS' WRITTEN NOTICE TO LESSOR PRIOR TO CANCELLATION OR MATERIAL CHANGE OF COVERAGE.

Lessee, at its expense, shall maintain on all its personal property, improvements, and alterations in, on, or about the Buildings and Site, a policy of standard fire and extended coverage insurance with vandalism and malicious mischief endorsements, of at least 100% of their full replacement value. The proceeds from any such policy shall be used by Lessee first for the restoration of Lessee's improvements or alterations and any remaining amount for the replacement of personal property.

Lessor shall maintain on the Buildings a policy of standard fire and extended coverage insurance which shall name Lessee as an additional insured, but shall provide that any proceeds shall be payable to Lessor.

12. UTILITIES. Lessee shall be responsible for the payment of all electrical, gas, water, sewer, garbage services, and any other utility service for the Buildings.

13. BUSINESS LICENSE. Lessee shall maintain a valid, non-delinquent City of Merced Business License throughout the term of this Lease and shall timely file all required quarterly business license statements and timely pay all fees thereunder to the City of Merced Finance Department.

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16. ABANDONMENT OF PREMISES. Lessee shall not vacate or abandon the Buildings or Site at any time during the term of this Lease. If Lessee abandons or vacates the Buildings or Site, or is dispossessed by process of law or otherwise, any personal property belonging to Lessee left on the Buildings or Site shall be deemed to be abandoned at the option of Lessor.

17. CONDEMNATION. If any part of the Buildings or Site is condemned for public use and a part remains which is susceptible for occupation by Lessee, this Lease shall, as to the part taken, terminate as of the date the condemnor acquires possession. Lessee shall be required to pay such proportion of the rent for the remaining term as the value of the Leased Space remaining bears to

the total value of the Buildings and Site at the date of condemnation; provided, however, that Lessor may at its option, terminate this Lease as of the date the condemnor acquires possession. In the event that the Buildings and Site are condemned in whole, or the remainder is not susceptible for use by the Lessee, this Lease shall terminate upon the date which the condemnor acquires possession. All sums which may be payable on account of any condemnation shall belong solely to the Lessor.

18. **TRADE FIXTURES.** Any and all improvements made to the Buildings and Site during the term of this Lease shall belong to the Lessor. Lessee agrees to keep trade fixtures and equipment located on the property in good and reasonable working condition.

19. **DESTRUCTION OF BUILDINGS OR SITE.** In the event of a partial destruction of the Buildings or Site during the term of this Lease from any cause, Lessor shall promptly repair the Buildings or Site, provided that such repairs can be reasonably made **WITHIN THIRTY (30) DAYS**. Such partial destruction shall not terminate this Lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs interferes with the business of Lessee on the Buildings or Site. If the repairs cannot be made **WITHIN THIRTY (30) DAYS**, this Lease may be terminated at the option of either party by giving written notice to the other party **WITHIN THE THIRTY (30) DAY PERIOD**.

20. **HAZARDOUS MATERIALS.** Lessee shall not use, store, or dispose of any hazardous substances upon the Buildings or Site, except the use and storage of such substances that are customarily used in Lessee's business and are in compliance with all environmental laws. Hazardous substances means any hazardous waste, substance or toxic materials regulated under any environmental law or regulations applicable to the Buildings or Site.

21. **INSOLVENCY.** The appointment of a receiver, an assignment for the benefits of creditors, or the filing of a petition in bankruptcy by or against Lessee shall constitute a breach of this Lease by Lessee.

22. **DEFAULT.** In the event of any breach of this Lease, Lessor may, at its option, terminate the Lease and recover from Lessee:

- a. The worth at the time of award of the unpaid rent, which had been earned at the time of termination;

- b. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided;
- c. The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and,
- d. Any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result there from.

Lessor may, in the alternative, continue this Lease in effect, as long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all of Lessor's rights and remedies under the Lease, including the right to recover the rent as it becomes due under the Lease. If said breach of Lease continues, Lessor may, at any time thereafter, elect to terminate the Lease.

Nothing contained herein shall be deemed to limit any other rights or remedies which Lessor may have.

23. SECURITY. A security deposit of One Thousand Two Hundred Dollars (\$1,200.00) shall secure the performance of the Lessee's obligations and shall be paid upon execution of this Lease. Lessor may, but shall not be obligated to apply all or portions of the deposit on account for Lessee's obligations. Any balance remaining upon termination shall be returned to Lessee.

24. DEPOSIT REFUNDS. The balance of all deposits shall be refunded WITHIN THREE (3) WEEKS (or otherwise as required by law) from the date possession is delivered to Lessor, together with a statement showing any charges made against such deposits by Lessor.

25. ATTORNEY'S FEES AND COSTS. In any action or proceeding involving a dispute between Lessor and Lessee arising out of this Lease, the prevailing party shall be entitled to reasonable attorney's fees and costs.

26. **WAIVER.** No failure of Lessor to enforce any term of this Lease shall be deemed to be a waiver. No purported waiver of any provision of this Lease shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

27. **NOTICES.** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at 4094 St. Remy Court, Merced, California 95348, or to Lessor at 678 West 18th Street, Merced, California 95340, with a copy to City Attorney, City of Merced, 678 West 18th Street, Merced, California 95340 or at such other place as may be designated by the parties from time to time. Notice shall be effective FIVE (5) DAYS AFTER MAILING, or immediately upon personal delivery.

28. **HOLDING OVER.**

- a. In the event it becomes necessary for Lessor to evict Lessee from the Buildings and Site, Lessee agrees to reimburse Lessor for any and all costs and expenses, including attorney fees, and to be liable to Lessor for any and all damages, including damages Lessor incurs as to third parties under subsequent Lease Agreements for the Buildings or Site.
- b. Lessee has waived and continues to waive any and all relocation benefits or payments that may arise due to the termination of this Lease or from the completed "G" Street Undercrossing Project.

29. **TIME.** Time is of the essence of this Lease.

30. **HEIRS, ASSIGNS, SUCCESSORS.** This Lease is binding upon and inures to the benefit of the heirs, assigns, and successors of the parties.

31. **LESSOR'S LIABILITY.** In the event of a transfer of Lessor's title or interest to the Premises during the term of this Lease, Lessee agrees that the grantee of such title or interest shall be substituted as the Lessor under this Lease, and the original Lessor shall be released of all further liability; provided, that all deposits shall be transferred to the grantee.

32. **IMPROVEMENTS SUPPLIED BY LESSEE.** The Buildings and Site are supplied as is by Lessor. All improvements are to be supplied by Lessee, including but not limited to HVAC, demising walls, lighting, floor and wall finishes, trade fixtures or equipment, ceilings, and all other improvements shall

remain in place and remain property of the Lessor upon termination of the Lease. Should Lessee desire any modifications, Lessee shall obtain all necessary permits and complete all building modifications utilizing current building codes. All improvements are subject to Lessor's written consent.

33. COVENANTS AND AGREEMENTS. There shall be no visible bars or grates over or behind any window visible from a public street or right-of-way. Any permanent signage must comply with City of Merced ordinances, must be of high quality materials, and shall not use tempera paint. Signage shall be installed consistent with Section 15 of this Lease. Lessee shall sweep or wash daily and otherwise keep clean the Site. Lessee agrees to paint over any graffiti that may occur within twenty-four (24) hours. If Lessee is in violation of any of the covenants and agreements, Lessor may enter and remedy the violation after forty-eight (48) hours of written notice. Lessee shall be responsible for reimbursing Lessor for actual costs incurred plus fifteen percent (15%) for any such action.

34. TRIPLE NET. This Lease is net of taxes, utilities, and insurance. Lessee's occupancy of Buildings and Site may give rise to a possessory interest tax, and Lessee agrees to pay such tax or other property taxes as may be levied.

35. ORDINANCES AND STATUTES. Lessee shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force or which may later be in force.

36. LESSOR'S WARRANTY OF TITLE. Lessor represents and warrants that:

- a. Lessor is or will be the sole owner in fee simple of the Site and the Buildings thereon and has full right and power to grant the estate demised and to execute and perform this Lease;
- b. The Buildings and Site will remain free and clear of all encumbrances that could adversely affect Lessee's leasehold estate; and
- c. The intended use of the Buildings and Site as stated herein is permitted by all applicable zoning laws and regulations.

37. QUIET ENJOYMENT. Lessor covenants and agrees that so long as Lessee observes and performs all the agreements and covenants required of it hereunder, Lessee shall peaceably and quietly have, hold, and enjoy the Buildings

and Site for the term of the Lease without any encumbrance or hindrance by Lessor.

38. **INDEMNIFICATION.** Lessee shall save, protect, defend (with counsel selected by Lessor), and hold Lessor and its officers, officials, employees and agents harmless from and indemnify Lessor against any and all claims, demands, suits, judgments, costs, and expenses asserted by any person or persons, including agents or employees of Lessee or Lessor, by reasons of death or injury to persons, or loss or damage to property, including but not limited to claims for dangerous conditions of Lessor's property, resulting from Lessor's activities upon the Buildings and Site, or as a result of the Lessee's use of the Buildings and Site.

39. **DAMAGE.** Lessee shall be responsible for any damage to Lessor's Buildings and Site which may result from Lessee's activities conducted on the Premises.

40. **EXHIBITS.** The Exhibits attached hereto are incorporated herein by this reference as if set forth in full.

41. **COVENANTS.** The Lessee herein covenants by and for itself, its heirs, executors, administrators, assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions.

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry, or national origin in the Lease, sublease, transfer, assignment, use, occupancy, tenure, or enjoyment of the Buildings and Site herein leased nor shall the Lessee himself, or nay person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Buildings and Site herein leased.

42. **MISCELLANEOUS PROVISIONS.**

(a) *Entire Agreement.* This Lease represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Lease.

(b) *Section Headings.* The section headings contained in this Lease are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(c) *No Reliance on Other Parties.* All parties to this Lease declare that, prior to the execution of this Lease, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection in order that they might intelligently exercise their own judgment in evaluating the contents of this Lease and making the decision to execute it. The parties each represent and acknowledge that in executing this Lease, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Lease with regard to the subject matter, basis or effect of this Lease.

(d) *Construction.* The provisions of this Lease shall be liberally construed to effectuate its purpose. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Lease. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

(e) *Governing Law.* The validity and interpretation of this Lease shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws. Any action pursuant to this Lease shall be brought exclusively in state courts for Merced County.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the date first above written.

LESSOR:
CITY OF MERCED
A California Charter Municipal
Corporation

BY: John R. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 3/13/12
City Attorney Date

22163
ACCOUNT DATA:

BY: [Signature]
Verified by Finance Officer

NO funds to encumber. MC 3/27/12

MR # 239102 3/26/12
✓

LESSEE:
VIVATH BOUNLANGSY AND
SOMBOUN BOUNLANGSY

BY: [Signature]
Vivath Bounlangsy

BY: [Signature]
Somboun Bounlangsy

ADDRESS: 4094 St. Remy Court
Merced, CA 95348

TELEPHONE: 209 385-0123
FAX _____
E-MAIL: vbounlangsy@yahoo.com

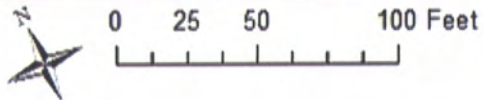
BUILDING

EXHIBIT A



0 25 50 100 Feet

SUBJECT SITE: APN 034-011-002





Pro Lube - 2322 "G" Street Proposal

Because we have such **strong ties to Merced** our goal for the Merced Location is to create a business that not only positively impacts a community that we love, but also a business that the community can be proud to welcome.

In the spirit of being a good business neighbor, we took inspiration from a lube center in Davis, CA that was recently constructed specifically (& rather successfully) to match the surrounding neighborhood.

Some of the design features that are specific to this standard:

- Elevation to compliment the underpass at G Street, including matching river rock façade.
- Cinder block wall along the adjoining property for noise suppression.
- Fenced community park (separate from dog run) that will be closed during non-business hours to help ensure it remains a safe & family-friendly park.
- Lot designed to accommodate an additional 25-35 cars at any given time to offset / absorb the estimated increase in traffic along 23rd & G Streets.
- Removal of the existing laundry facility to offset the foot traffic generated by the sandwich shop.
- Keeping the business closed at night, in addition to security personnel to keep our location safe, as well as from disrupting the neighborhood.
- Adding additional lighting (solar—if possible) along 23rd Street
- Making sure that all of our lighting is directed in a way that it will not disturb the neighbors.
- ± 80% of all water used by car wash / pet grooming will be reclaimed or recycled

Pro Lube - 2322 "G" Street Proposal



Pro Lube Merced



We are proposing to rehab & upgrade the existing Car Wash and incorporate it into a flagship location for our Pro Lube Oil Change Business, which will also house our corporate office. In addition, we will offer a sandwich shop, public park area, public pet grooming center and dog run, staffed & maintained by 22-28 employees.

Our goal is to create a safe & relaxing atmosphere, in which the community can take care of their automotive needs by late 2015, early 2016.

Pet Grooming Center



Our self-service pet grooming center will be the only one in Merced!

This fenced center will feature warm water and shampoo choices for the comfort and safety of the pets, as well as featuring a separate fenced dog run where pets can air dry before getting back into the car .

Our Dog run will also feature a water station for the animals, as well as a doggie waste bag dispenser & receptacle. We will also treat the grass as needed to keep bugs, and odor from becoming harmful or unpleasant.

~ Site Plan Legend ~

- A. Existing Car Wash
- B. Existing Vacuums
- C. New Pet Grooming Center
 - ~ New Shampoo & Vacuum Islands
- D. New Pro Lube Oil Change Center
 - ~ Office
 - ~ Sandwich Shop (Subway)
- E. New Expanded Driveway & Monument
- F. Fenced and Gated Private Park
 - ~ Will only be open during business hours
- G. Covered & Enclosed Dumpster Areas
- H. New Dumpster Area
- I. New Future Detail / Retail Shop
- J. New Future Transmission Center
- K. New Pro Lube Storage



Pro Lube Merced



~ Site Plan Legend ~

- A. Existing Car Wash
- B. Existing Vacuums
- C. New Pet Grooming Center
 - ~ New Shampoo & Vacuum Islands
- D. New Pro Lube Oil Change Center
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- G. Covered & Enclosed Dumpster Areas
- H. New Dumpster Area
- I. New Future Detail / Retail Shop
- J. New Future Transmission Center
- K. New Pro Lube Storage



Pro Lube Merced





P.O. BOX 235
CATHEYS VALLEY, CA. 95306
OFFICE# (209) 966-6816
FAX # (209) 742-6316

To: Merced City Manager John Bramble
Subject: Construction extension request, Pro Lube Inc.
Request: Construction Extension from December 22nd, 2015 to June 22nd, 2016

Dear John,

Although it was Pro Lube Inc. intention to begin construction in August of 2015, we have had some expected, and many unexpected delays for various reasons. One of our largest delays was in the re-inspection of the property to make sure that it is environmentally safe to build. The phase 1 environmental report obtained by Pro Lube Inc. upon purchase of the property was not acceptable to the SBA or BBVA Compass Bank. It was out dated and contained language that referenced "possible" contamination from former businesses previously operating at the location.

Although there were other reasons that have caused us delay such as our engineer having double bi-pass heart surgery, our contractor Skip George, CCC Construction, had notified us that if he could not break ground by September 30th he would advise not to break ground until March or April when the cold and rainy season is over; otherwise causing further delay.

Because of the size and complexity of our project our engineers at Golden Valley Engineering have broken the project into a three phase construction process.

Building Plan turn in dates:

Phase 1 (Carwash): October 25th, 2015 (confirmed)

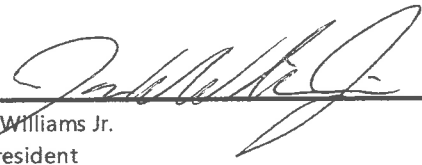
Phase 2 (Pro Lube & Sandwich shop) - November 15th, 2015 (not confirmed)

Phase 3 (Automotive Shop & Pro Lube Offices) – December 15th, 2015 (not confirmed)

We are currently entering the underwriting stage of the loan process with the SBA and are waiting for word from BBVA Compass Bank manager. The latest time frame given by Cal with SBA finance was five to six weeks.

We thank you for your time and patience and continued support of our project. We have included an updated site map so you can view the upgrades that have been made since the original submission to the council. On further note, since we obtained the property in December 2014 we have removed excess debris, removed the house on the property, and installed surveillance, which makes the property more inviting. We expect all financing and building plan approval to be completed by January 1st, 2016. At that time we will be waiting to begin construction as weather permits. For these reasons we are requesting a **Construction Extension** through June 22nd, 2016. In the mean time we will keep the lot clean and operational.

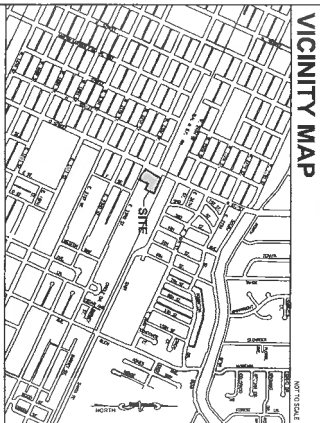
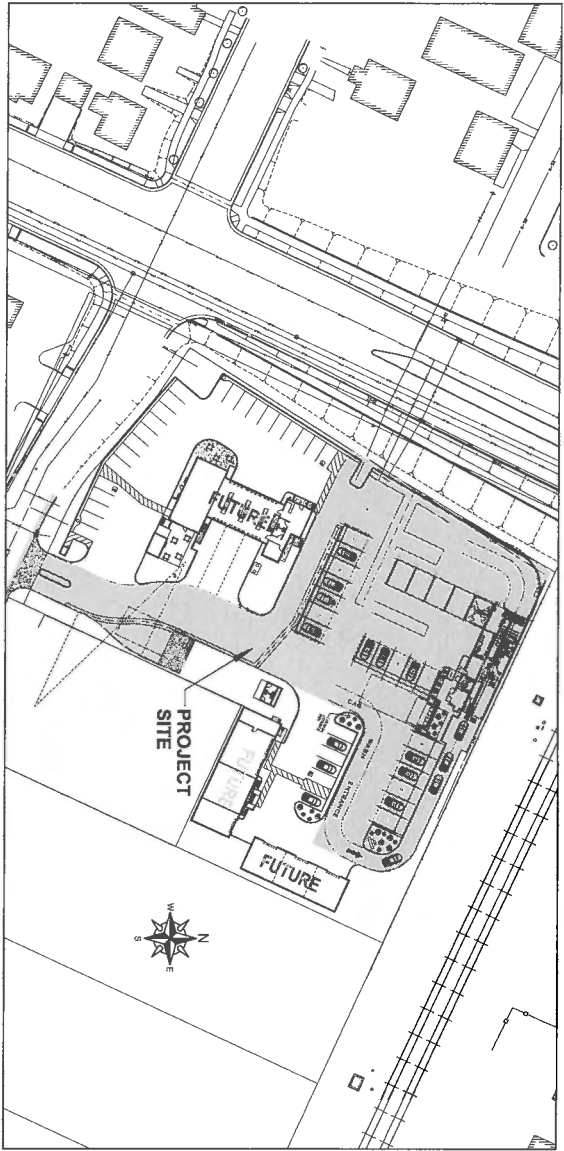
Thank You,

X 
James Williams Jr.
Vice President

REMODEL / ADDITION TO EXISTING CAR WASH

PRO LUBE

SOUTH WEST CORNER OF 'G' STREET & 23rd STREET



VICINITY MAP

GENERAL:
T1
GREEN CODE CHECKLIST

Civil:
C1. CHIL NOTES
C2. TOPOGRAPHY
C3. DEMOLITION PLAN
C4. SITE P.L.
C5. SITE DIMENSION PLAN
C6. UTILITY PLAN
C7. CIVIL DETAILS
C8. CIVIL DETAILS
C9. CIVIL DETAILS
C10.

BUILDING:
B1. DEMOLITION PLAN
B2. ELEVATIONS
B3. FLOOR PLAN
B4. BUILDING SECTION
B5. BUILDING SECTION
B6. BUILDING SECTION
B7. BUILDING SECTION

ADA ACCESSIBILITY
A1. ACCESSIBILITY DETAILS

STRUCTURAL:
S1. FOUNDATION PLAN
S2. ROOF PLAN
S3. FRAMING DETAILS
S4. FRAMING DETAILS
S5. BUILDING SECTION
S6. BUILDING SECTION
S7. BUILDING SECTION

ELECTRICAL (PETER KIVAN ENGINEERING)
E1. ELECTRICAL SITE PLAN
E2. POWER PLAN
E3. ELEC DETAIL LINE DIAGRAM, PANEL SCH.
E4.

MECHANICAL (LP ENGINEERS)
M1. MECHANICAL SCHEDULES & LEGENDS
M2. MECHANICAL FLOOR PLAN
M3.

PLUMBING (LP ENGINEERS)
P1. PLUMBING SCHEDULE & LEGEND
P2. PLUMBING FLOOR PLAN
P3. PLUMBING DETAIL

GOLDEN VALLEY
ENGINEERING & SURVEYING
400 West 19th Street, Suite 100
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

Red Williams
3097 5th Street
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

PRO LUBE
3097 5th Street
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

GENERAL NOTES:

1. ALL WORK SHALL COMPLY WITH TITLE 24, 2013 CBC, CFC, CMC, CEC AND THE CITY OF MERCED STANDARDS.
2. CONSTRUCTION SHALL VERIFY ALL UTILITY LOCATIONS AND DEPT'S AS INDICATED HEREON AND SHALL PROTECT TO REMAIN IN PLACE.
3. THE CONTRACTOR SHALL VERIFY THE SITE AND VERIFY WITH ALL DEPARTMENTS OF MERCED COUNTY AND THE CITY OF MERCED AND THE COUNTY OF MERCED FOR ANY CONSTRUCTION OF EXISTING BUILDINGS AND UTILITIES.
4. THE CONTRACTOR SHALL VERIFY THE SITE AND VERIFY WITH ALL DEPARTMENTS OF MERCED COUNTY AND THE CITY OF MERCED AND THE COUNTY OF MERCED FOR ANY CONSTRUCTION OF EXISTING BUILDINGS AND UTILITIES.
5. CONSTRUCTION SHALL HAVE ALL NECESSARY PERMITS AND APPROVALS TO PROTECT ADJACENT PROPERTIES AND NEIGHBORS.
6. AN ENVIRONMENTAL IMPACT REPORT IS REQUIRED PRIOR TO ANY CONSTRUCTION WITHIN CITY OF MERCED LIMITS.
7. ALL UTILITIES SHALL BE PROTECTED AND SHALL BE REPAIRED OR REPLACED TO ORIGINAL OR BETTER CONDITION.
8. SOIL PROFILES TO BE SHOWN TO OWNER AND CITY OF MERCED PRIOR TO STARTING CONSTRUCTION.
9. CONTRACTOR SHALL VERIFY THE EXISTING CONDITIONS AND SHALL PROTECT TO REMAIN IN PLACE.
10. THE CONTRACTOR SHALL VERIFY THE SITE AND VERIFY WITH ALL DEPARTMENTS OF MERCED COUNTY AND THE CITY OF MERCED AND THE COUNTY OF MERCED FOR ANY CONSTRUCTION OF EXISTING BUILDINGS AND UTILITIES.
11. THE CONTRACTOR SHALL VERIFY THE SITE AND VERIFY WITH ALL DEPARTMENTS OF MERCED COUNTY AND THE CITY OF MERCED AND THE COUNTY OF MERCED FOR ANY CONSTRUCTION OF EXISTING BUILDINGS AND UTILITIES.
12. CONSTRUCTION SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE CITY OF MERCED, MERCED COUNTY AND THE COUNTY OF MERCED PERMITS AND APPROVALS.
13. CONSTRUCTION SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.
14. PROJECT LAYOUT SHALL BE SHOWN TO OWNER AND CITY OF MERCED PRIOR TO STARTING CONSTRUCTION.
15. AT THE TIME OF THE FINAL BUILDING INSPECTION THE CONTRACTOR SHALL OBTAIN THE BUILDING INSPECTION REPORT FROM THE CITY OF MERCED AND THE COUNTY OF MERCED.
16. SET BACKS AND OTHER REQUIREMENTS SHALL BE SHOWN TO OWNER AND CITY OF MERCED PRIOR TO STARTING CONSTRUCTION.
17. THE PROJECT IS IN COMPLIANCE WITH TITLE 24 BARBECUED ACCESS REQUIREMENTS.

PROJECT DESIGNERS:

CIVIL/ARCHITECTURAL
GOLDEN VALLEY ENGINEERING & SURVEYING
400 West 19th Street, Suite 100
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

ELECTRICAL DESIGN:
PETER KIVAN ENGINEERING
1500 1st Street, Suite 208
Merced, CA 95341
Tel: (209) 432-1147
Fax: (209) 432-1825

MECHANICAL/PLUMBING DESIGN:
RED WILLIAMS
3097 5th Street
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

CONTRACTOR:
COMMERCIAL CONSTRUCTION, INC.
1000 1st Street
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

PROJECT DATA:

OWNER: GOLDEN VALLEY ENGINEERING & SURVEYING
400 West 19th Street, Suite 100
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

PROJECT LOCATION: 3097 5th Street & 23rd Street
Merced, CA 95341

ADJACENT BUILDING CODES: 2013 CBC, CFC, CMC, CEC AND CEC

OCCUPANCY GROUP: 8 (OFFICE), 5-2 (AUTO SERVICE)

UTILITIES: ELECTRIC - MERCED IRREGULAR DISTRICT
GAS - MERCED GAS & ELECTRIC
WATER - CITY OF MERCED
SEWER - CITY OF MERCED
STORM SEWER - CITY OF MERCED

SITE USE: COMMERCIAL

OCCUPANCY ESTIMATION: NOT REQUIRED (SEE TABLE 506.4)

FIRE SPRINKLER: NO

FLOOD ZONE: AO (1' SEPM)

TYPE OF CONSTRUCTION: N-M

CONTRACTOR:

COMMERCIAL CONSTRUCTION, INC.
1000 1st Street
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

REMODEL / ADDITION TO EXISTING CAR WASH FOR PRO LUBE

SW Corner of 'G' Street & 23rd Street

MERCED CALIFORNIA



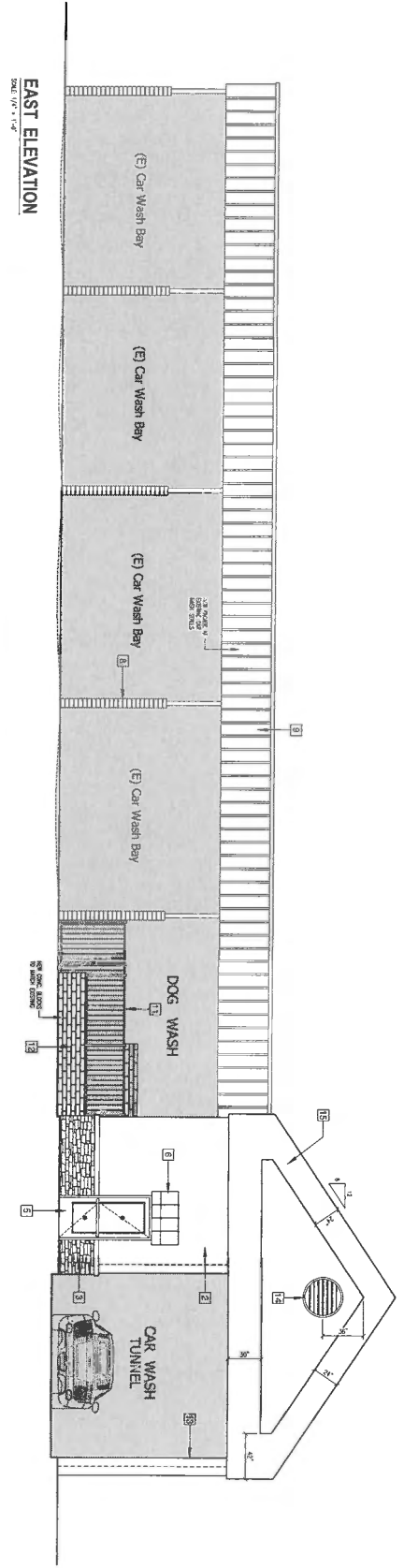
Red Williams
3097 5th Street
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

PRO LUBE
3097 5th Street
Merced, CA 95341
Tel: (209) 722-2324
Fax: (209) 722-2324

T1.0

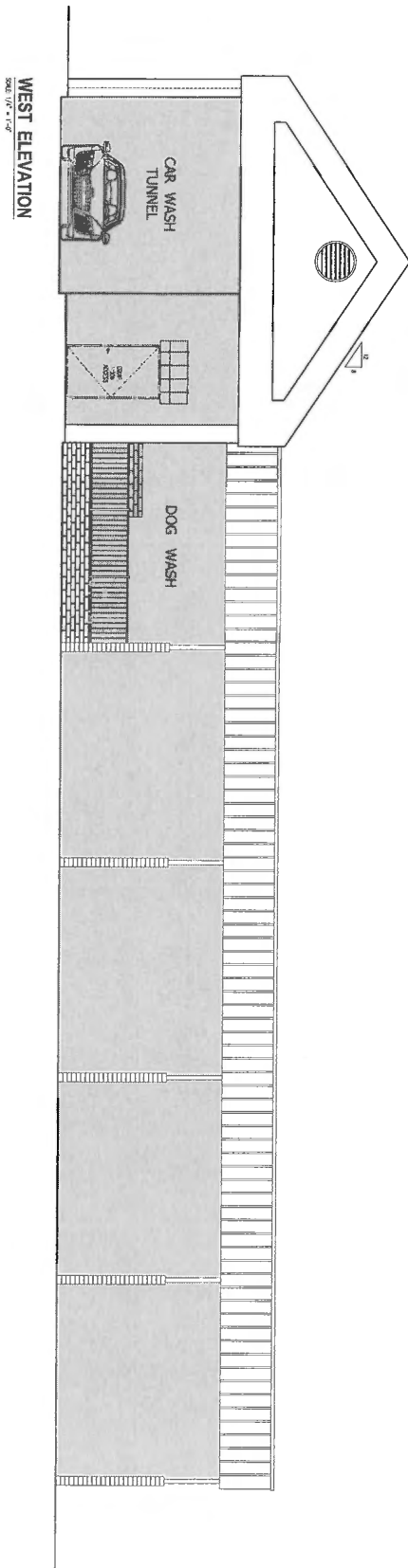
EAST ELEVATION

SCALE: 1/8" = 1'-0"



WEST ELEVATION

SCALE: 1/8" = 1'-0"



- KEYNOTES** □
1. Stairing Steam metal roof (Low Rise)
 2. Existing Steam metal roof (Low Rise)
 3. Cultured Stone (SN) by owner
 4. Tempered glass
 5. Existing door/window system (7' tall)
 6. Existing door/window system (7' tall)
 7. Existing car wash bay structure
 8. Existing block wall at car wash bays
 9. Existing Steam metal roof (Vandal)
 10. Stucco finish (Solid finish)
 11. Wrought iron metal railing (brushed black finish)
 12. CMU block wall 8" x 8" x 8"
 14. 36" dia. attic vent (Each end)
 15. 27' build-out
 17. .
 18. .
 19. .
 20. .

**REMODEL / ADDITION TO EXISTING CAR WASH FOR
PRO LUBE**
SW Corner of 'G' Street & 23rd Street

MERCED

CALIFORNIA



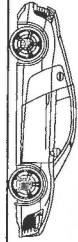
Rad Williams
3527 5th Street
Modesto, CA 95350
Ph: (209) 709-7890

PROJECT:
DATE: March 2015
DRAWN BY: Rad Williams
CHECKED BY: Rad Williams
DATE: Nov. 16, 2017

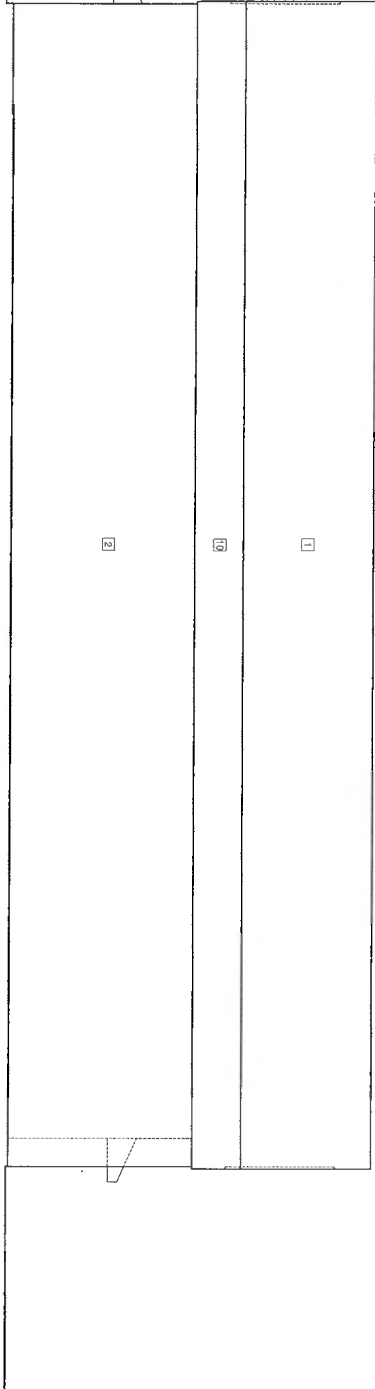
A1.0

GOLDEN VALLEY
ENGINEERING & SURVEYING
405 West 14th Street, Suite 200A
Hayward, CA 94541
Ph: (510) 222-3534
Fax: (510) 222-3534

REGISTERED:
Professional Engineer No. 47127
Professional Surveyor No. 10000
Professional Geotechnical Engineer No. 10000
Professional Civil Engineer No. 10000
Professional Mechanical Engineer No. 10000
Professional Electrical Engineer No. 10000
Professional Structural Engineer No. 10000
Professional Architect No. 10000
Professional Landscape Architect No. 10000
Professional Interior Designer No. 10000
Professional Planning No. 10000
Professional Urban Designer No. 10000
Professional Environmental Engineer No. 10000
Professional Environmental Scientist No. 10000
Professional Environmental Planner No. 10000
Professional Environmental Analyst No. 10000
Professional Environmental Specialist No. 10000
Professional Environmental Consultant No. 10000
Professional Environmental Scientist No. 10000
Professional Environmental Planner No. 10000
Professional Environmental Analyst No. 10000
Professional Environmental Specialist No. 10000
Professional Environmental Consultant No. 10000

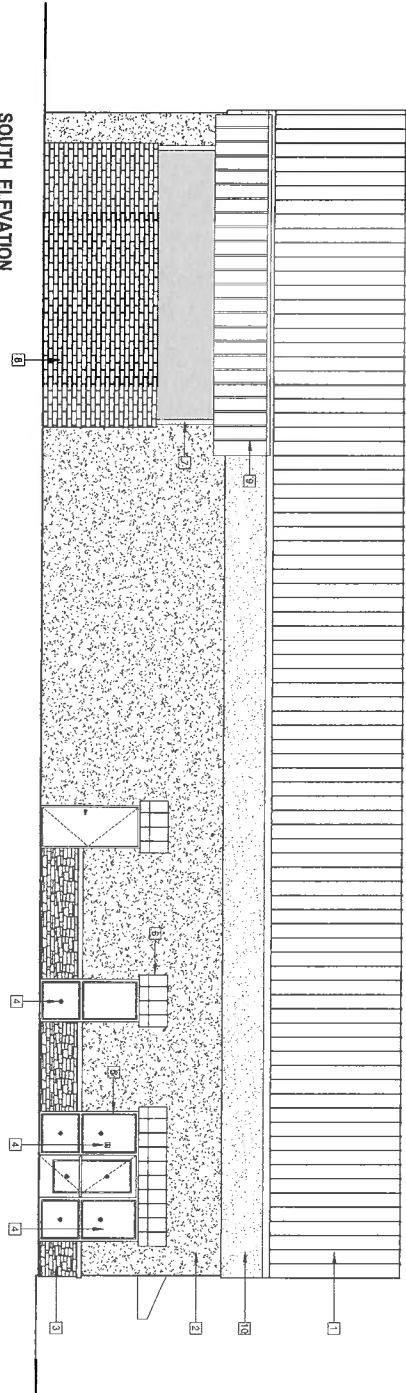


NORTH ELEVATION
SCALE: 1/2" = 1'-0"



- KEYNOTES**
- 1 Standing seam metal roof (Low Rise)
 - 2 3/4" Sycamore (Sycamore)
 - 3 1/2" Tempered glass
 - 4 Tempered glass
 - 5 Superior door/window system (Full)
 - 6 Existing car wash bay structure
 - 7 Existing block wall at car wash bays
 - 8 Existing block wall at car wash bays
 - 9 Existing block wall (vertical)
 - 10 Sycamore siding (Sycamore)
 - 11 Wrought iron metal railing (Anodized black finish)
 - 12 CMU block wall (8" x 16" x 8")
 - 13 3/4" dia. attic vent (Ekena)
 - 14 3/4" dia. attic vent (Ekena)
 - 15 2" hood-cut
 - 16
 - 17
 - 18
 - 19
 - 20

SOUTH ELEVATION
SCALE: 1/2" = 1'-0"



REMODEL / ADDITION TO EXISTING CAR WASH FOR
PRO LUBE
SW Corner of 'G' Street & 23rd Street

MERCED

CALIFORNIA



Red Williams
3037 Silk Road
Madras, CA 95550
Ph: (530) 784-9390

PROJECT:
3037 Silk Road
Madras, CA 95550
Ph: (530) 784-9390

A1.1

GOLDEN VALLEY
ENGINEERING & SURVEYING
100 WEST 10TH STREET, SUITE 100
MADRAS, CA 95551
Ph: (530) 784-9390
Fax: (530) 724-0284

PROJECT:
3037 Silk Road
Madras, CA 95550
Ph: (530) 784-9390

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made and entered into this ___ day of _____, 2015, by and between the City of Merced, a California Charter Municipal Corporation (“Seller”), and Pro Lube Incorporated, a California Corporation, whose address of record is P.O. Box 235, Catheys Valley, California 95306 (“Buyer”).

WHEREAS, Seller and Buyer have previously entered into a Purchase and Sale Agreement (“Agreement”) dated October 20, 2014;

WHEREAS, Seller and Buyer desire to amend said Agreement to amend Attachment “E.”

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, agree as follows:

1. Section 9, “COMMENCEMENT OF CONSTRUCTION, SCHEDULE, AND SELLER’S RIGHT TO REPURCHASE SUBJECT PROPERTY,” is hereby amended to read as follows:


“SECTION 9. COMMENCEMENT OF CONSTRUCTION, SCHEDULE AND SELLER’S RIGHT TO REPURCHASE SUBJECT PROPERTY.

Buyer agrees to obtain all necessary building permits and commence construction of Phase One of the Project as described in revised Attachment “E” attached hereto within twenty-four (24) months of the close of escrow and to thereafter diligently pursue its completion. It is hereby agreed that failure of Buyer to commence construction of the Phase One of the Project within said twenty-four (24) month period shall give Seller the right to an option to repurchase the Subject Property. The price for Seller’s option to repurchase shall be the purchase price paid by the original Buyer without interest, appreciation, or reimbursement for any improvements, costs, expenses, or City, County, or other taxes or assessments levied or assessed against the

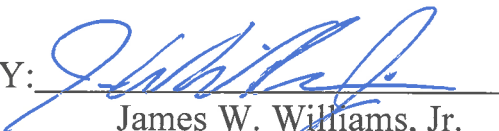
ACCOUNT DATA:

BY: _____
Verified by Finance Officer

BUYER:
PRO LUBE INCORPORATED,
a California Corporation

BY: 
Michael J. Hausmann
President

TELEPHONE: 209-769-7080
E-MAIL: prolubeinc@sti.net

BY: 
James W. Williams, Jr.
Vice President

TELEPHONE: 209-769-7890
E-MAIL: prolube@sti.net

Taxpayer I.D. No. 77-2122378

ADDRESS: P.O. Box 235
Catheys Valley, CA 95306



Pro Lube - 2322 "G" Street Proposal

Phase 1 Construction

- Pro Lube Building
- Car Wash Remodel
- Vacuum Remodel
- Pet Groom Center
- Site Work
- Parks, Landscape, Signs

Phase 2 Construction

- Future Retail Building
- Future Transmission Shop
- Pro Lube Storage Building



ADMINISTRATIVE REPORT

Agenda Item K.11.

Meeting Date: 12/7/2015

Report Prepared by: *Lindsey Johnson, Recreation Supervisor, Parks and Community Services*

SUBJECT: Agreement with Merced Zoological Society

REPORT IN BRIEF

Agreement with Merced Zoological Society to contribute at least \$85,000 of the total operating budget for Fiscal Year 2015/2016.

RECOMMENDATION

City Council - Adopt a motion approving the agreement with the Merced Zoological Society for payment of at least \$85,000, (approximately 30%) of the total operating budget at the Zoo and authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

As provided for in the 2015-16 Adopted Budget

DISCUSSION

Since 1994, the City of Merced has entered into annual agreements with the Merced Zoological Society for assistance with the operating costs of the Applegate Park Zoo. Generally, the contributions from the Society are used for operating expenses such as animal health, supplies, landscaping and staff costs. The Merced Zoological Society collects money by charging an entrance

fee to the zoo, operating the Bear Creek Nature Store, as well as hosting numerous fundraisers throughout the year.

In June 2015, the City Council approved a budget that included a contribution by the Society of at least \$85,000 (approximately 30%). This is the same minimum amount that they were required to contribute last year. The Society continues to support the City as much as possible. For example, last year they were only required to contribute \$85,000 to the City, but they ended up contributing \$92,647. There have also been other times throughout the last 20 years that their contributions have exceeded what was asked of them. In addition to their monetary contributions, they provide many in-kind services to the Zoo. While they are required to pay at least \$85,000 this year, it is expected that they will exceed this amount. The new zookeeper is creating several new programs that will help increase attendance, which will in turn generate increased revenues from admissions.

The proposed operating budget (total budget less capital improvement project expenses) for FY 15/16 is roughly \$284,345, so an \$85,000 contribution by the Society would amount to approximately 30% of the total operating budget. While the Society will be contributing the same amount as last year, the total percentage of the budget that they are contributing is lower than before, because of the increased zoo budget, due to the addition of a second zookeeper. The City will continue to operate Applegate Park Zoo and will allow the Merced Zoological Society to collect an entrance fee that can be used towards its contribution for expenses.

IMPACT ON CITY RESOURCES

The contributed funds will be placed in Zoo revenue account 024-1205-360.02-00.

ATTACHMENTS

1. Annual Agreement
2. Zoo Financial Report

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____ 2015, by and between the City of Merced, a California Charter Municipal Corporation (hereinafter referred to as “City”) and the Merced Zoological Society, a California Nonprofit Corporation (hereinafter referred to as “Society”).

WHEREAS, City has faced a significant reduction in its ability to fund discretionary programs, yet recognizes the value of the Applegate Park Zoo (hereinafter referred to as “Zoo”) as an important part of the quality of life in this community; and,

WHEREAS, Society is a nonprofit organization formed to assist the City with a program of Zoo renovation and expansions so as to provide increased educational and recreational opportunities to visitors of and operations of the Zoo; and,

WHEREAS, Society is willing to make contributions to City to defray the operational cost of the Zoo in exchange for the City’s continued operation of the Zoo.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. Society agrees to pay City all entry fees collected at the Zoo. Society guarantees that entry fees will be at least Seventy Thousand Dollars (\$70,000.00). In the event the total entry fees collected exceeds Seventy Thousand Dollars (\$70,000.00), Society agrees to include the additional entry fees collected in their final payment to the City on June 30, 2016. Society agrees to contribute an additional Fifteen Thousand Dollars (\$15,000.00) to City to help offset the operating budget of the Zoo. While it is anticipated that this revenue will amount to approximately thirty percent (30%) of the operating budget for the Zoo for fiscal year 2015-2016, Society guarantees that the combined entry fees and Society’s contribution will be at least Eighty-Five Thousand Dollars (\$85,000.00). In the event that entry fees and contribution exceed this amount, any additional monies collected in entry fees shall be given to City and used to reduce General Fund expenditures in the Zoo budget. Society agrees to pay to City four (4) equal payments of Twenty-One Thousand Two Hundred Fifty Dollars (\$21,250.00) on September 30, 2015, December 31, 2015, March 30, 2016, and June 30, 2016.

2. In exchange for the payments made by Society, City agrees to continue the operation of the Zoo. Society shall collect an entry fee to the Zoo on behalf of the City and shall operate a gift shop. In addition, it is understood the Society may undertake the following specific activities:

- a. Collect an entry fee to the Zoo on behalf of the City for group tours and special events.
- b. Operate the Bear Creek Nature Store Gift Shop.
- c. Operate the soft drink machines as part of the Gift Shop.
- d. Hold fundraisers and special events such as “Zoo Boo,” “Teddy Bear Days,” Birthday Parties,” “Zoo Camp,” “Animal Adoption,” and the like.
- e. Purchase and sell oat pellets to the public to feed the goats and other domesticated animals.
- f. Offer membership to the Merced Zoological Society and allow free admission to the Zoo for Society Members.
- g. Seek additional sponsorships and donations.

Any proceeds from entry fees shall be credited toward the payments by Society to City as described in paragraph 1 hereof.

3. **RECORDS AND REPORTS.** It is understood and agreed that all records, files, reports, etc. in possession of Society relating to the collection of an entry fee for the City shall be the property of the City and may be reviewed by the City at any time. Society agrees to deliver a report summary of entry fees collected to the City at the end of each month reporting the previous month’s statistics.

4. **INDEPENDENT CONTRACTOR.** It is expressly understood that Society is an independent contractor and that its employees, volunteers and agents shall not be considered employees of or have any contractual relationship with the City in the course of providing services under this Agreement. Society shall indemnify, defend (with legal counsel reasonably agreeable to both City and Society), protect, save and hold the City harmless from any and all claims or

causes of action for death or injury to persons or damage to property resulting from intentional or negligent acts, errors, or omissions of Society's employees, volunteers or agents during performance of this Agreement.

Society shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance, if any. Should Society desire any insurance protection not otherwise required by this Agreement, Society is to acquire the same at its expense.

5. INSURANCE. During the term of this Agreement, Society shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full Workers' Compensation Insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one (1) person.

b. General Liability. Society shall obtain and keep in full force and effect a commercial and general liability of at least Five Hundred Thousand Dollars (\$500,000) combined limit for bodily injury and property damage; provided that the City, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Society and its sub-contractors, and that no other insurance effected by City or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The City will be named as an additional insured using ISO form CG 20 10 11 85 or the same form with an edition date no later than 1990.

c. Certificate of Insurance. Society shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance, or certified copies thereof, evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation, including cancellation for non-payment of premium. In lieu of the ISO form CG20 10 11 85 with an edition date no later than 1990, City will accept certified copies of the insurance policy or policies with the endorsements and cancellation provisions required by this Section 5.

6. INDEMNIFICATION AND SOCIETY'S RESPONSIBILITIES.

Society shall indemnify, protect, defend (with legal counsel reasonably agreeable to both City and Society), and hold harmless City and its officials, officers, employees, agents, and volunteers from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts, errors, or omissions of Society or its employees, subcontractors, or agents, or by the quality or character of their work. The foregoing obligation of Society shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers; and, (2) the actions of Society or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Society to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Society from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Society acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Society or any employee, agent, or subcontractor of Society providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Society shall indemnify, defend, protect, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Society or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

7. NEGOTIATION MEETING. Society and City shall meet at a mutually agreed date on or before March 30, 2016 to negotiate Society's contribution for the next fiscal year if it appears that the parties intend to enter into an agreement for the next fiscal year.

8. SPENDING REVIEW. Society and City shall review the actual expenditures in the 2015-2016 fiscal year at the end of the 2015-2016 fiscal year to determine the appropriate amount of Society's contribution for the next fiscal year if it appears that the parties intend to enter into an agreement for the next fiscal year.

9. CREDITS FOR FUNDS NOT EXPENDED. In the event that the entire amount budgeted by the City for the operation of the Zoo is not expended, the unspent funds will be credited to Society against its Fifteen Thousand Dollar (\$15,000.00) donation to the City. City will exercise its best effort to provide a copy of a report of all City expenditures from the budgeted amount by October 1, 2015. The City expenditures will include all expenses, costs, fees, salaries, and other expenses to the City for the operation of the Zoo, whether including expenditures not reflected in the budget.

10. COMPLIANCE WITH ALL LAWS. Society shall comply with the standard of care regarding all applicable Federal, State and municipal laws and regulations. No discrimination shall be made by Society in the employment of persons to work under this Agreement because of race, color, national origin, ancestry, disability, sex, or religion of such person.

11. PERSONAL LIABILITY. Under no circumstances is any member of the Merced Zoological Society (Executive Board or Members) personally responsible for the quarterly payments that the Society is to make to the City.

12. WAIVER. In the event that either City or Society shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

13. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

14. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

15. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or

contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

16. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

17. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

BY: Kelley Finner 8/20/15
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

MERCED ZOOLOGICAL SOCIETY,
A California Nonprofit Corporation

BY: Marlene Murphy

Title: President

Print Name: Marlene Murphy

BY: Jhon Carlos

Title: Treasurer

Print Name: Jhon Carlos

Taxpayer I.D. No. 77-0011580

ADDRESS: P.O. Box 408
Merced, CA 95341

TELEPHONE: (209) 725-3337

FACSIMILE: (209) 725 - 3337

E-MAIL: MERCERZOO@GMAIL.COM

City of Merced
Zoo Expenditures
1994 thru 2015

Account Number	Element	2015		2014		2013		2012		20	
		Cumulative	Budget	Actual	Budget	Actual	Budget	Actual	Budget		
024-1205-541.01-00	Regular Salaries		52,586	52,092	51,740	51,739	51,331	51,331	49,514	47,294	46,574
024-1205-541.03-00	Extra Help		45,571	45,570	40,080	40,080	38,584	36,231	43,773	43,772	38,537
024-1205-541.04-01	Regular Overtime		993	599	1,385	1,384	2,259	348	92	92	1,204
024-1205-541.04-04	Call Back Time Worked		133	-	16	-	131	-	131	92	131
024-1205-541.10-01	Holiday Pay		1,765	1,465	1,925	1,925	1,924	1,924	1,929	1,928	1,923
024-1205-541.10-05	Retirement PERS		13,278	12,496	11,688	11,687	11,052	11,051	10,353	10,082	8,382
024-1205-541.10-06	Social Security-OASDI		3,481	3,176	3,407	3,327	3,475	3,191	3,771	2,985	3,608
024-1205-541.10-07	Social Security-Medicare		1,446	1,403	1,368	1,367	1,377	1,274	1,355	1,309	1,292
024-1205-541.10-12	Workers Compensation		19,355	19,355	13,269	13,269	24,829	24,829	14,410	14,410	19,175
024-1205-541.10-20	Earned Benefit		442	-	1,932	1,884	3,477	869	3,477	135	3,018
024-1205-541.10-27	PTS Plan FICA Alternative		593	593	525	525	506	473	562	547	588
024-1205-541.10-33	Core Allowance		19,608	19,173	20,433	18,896	18,913	18,562	18,953	17,684	16,418
024-1205-542.11-00	Utilities		9,600	8,980	7,500	6,994	6,600	6,551	7,500	7,500	6,600
024-1205-542.12-00	Telephone		770	707	720	594	1,140	831	1,140	883	1,140
024-1205-542.17-00	Professional Services		7,058	6,943	7,240	7,239	6,240	3,030	6,523	5,624	6,240
024-1205-542.24-00	Memberships, Subscription		950	185	1,250	1,238	1,050	974	950	656	950
024-1205-542.25-00	Maintenance Mats & Svcs		5,235	5,201	6,630	6,002	6,080	5,533	4,830	4,614	6,138
024-1205-542.29-00	Other Materials Supplies		14,113	11,757	12,800	11,432	10,278	10,102	14,530	9,728	10,892
024-1205-542.30-01	Insurance		1,543	1,543	1,830	1,830	2,337	2,337	3,330	3,330	2,141
024-1205-542.38-00	Support Services		4,157	4,157	4,058	4,058	5,154	5,154	5,175	5,175	4,911
024-1205-542.45-00	Facilities Maint Charge		5,542	5,542	4,506	4,506	4,581	4,581	4,522	4,522	5,053
024-1205-543.43-00	Machinery/Equipment		400	-	400	400	400	-	400	-	400
024-1205-549-12-00	Telephone		42	41	102	101	51	51	-	-	-
024-1205-549.17-00	Professional Services		1,139	-	3,211	2,072	899	899	-	-	-
024-1205-549.25-00	Maintenance Mats & Svcs		300	300	-	-	-	-	-	-	65
024-1205-549.29-00	Other Materials Supplies		1,334	1,000	177	134	-	-	-	-	892
	Personnel & Supply Expenses		2,192,698	2,022,278	198,192	192,683	206,237	193,694	209,471	194,521	217,337
	2005-2015 Cumulative										
024-1201 & 1205-5XX	Administrative Expense		102,444	5,018	4,831	4,831	4,139	4,139	4,668	4,668	5,070
	Total Expense		2,300,160	2,07,296	203,023	197,514	210,376	197,833	214,139	199,189	222,407
	One-Third of Total Expense		766,720	69,099	67,674	65,838	70,125	65,944	71,380	66,396	74,136
024-1205-360.02-01	Zoo Society Contribution		854,851	92,647	82,449	87,800	112,803	92,141	75,123	89,351	66,607
	Difference Between One-Third Expense and Contribution		(88,131)	(23,548)	(14,775)	(21,962)	(42,678)	(26,197)	(3,743)	(22,955)	7,529

City of Merced
Zoo Expenditures
1994 thru 2015

Account Number	Element	2010		2009		
		Actual	Budget	Actual	Budget	Actual
024-1205-541.01-00	Regular Salaries	46,573	51,154	51,153	65,760	63,845
024-1205-541.03-00	Extra Help	38,536	32,715	32,714	29,628	29,989
024-1205-541.04-01	Regular Overtime	1,020	3,142	2,788	2,866	2,853
024-1205-541.04-04	Call Back Time Worked	43	95	-	50	41
024-1205-541.10-01	Holiday Pay	1,923	1,883	1,883	3,114	1,777
024-1205-541.10-05	Retirement PERS	8,382	9,025	9,024	11,522	11,095
024-1205-541.10-06	Social Security-OASDI	3,126	3,861	3,535	5,981	4,628
024-1205-541.10-07	Social Security-Medicare	1,291	1,302	1,301	1,706	1,517
024-1205-541.10-12	Workers Compensation	17,837	12,094	4,943	10,621	1,576
024-1205-541.10-20	Earned Benefit	3,018	3,606	2,799	6,877	6,850
024-1205-541.10-27	PTS Plan FICA Alternative	502	442	425	406	390
024-1205-541.10-33	Core Allowance	15,939	16,814	15,122	24,292	24,117
024-1205-542.11-00	Utilities	6,411	7,139	7,138	4,500	4,282
024-1205-542.12-00	Telephone	971	1,040	976	1,344	1,102
024-1205-542.17-00	Professional Services	4,580	6,400	6,150	6,355	4,790
024-1205-542.24-00	Memberships, Subscription	789	808	808	1,077	949
024-1205-542.25-00	Maintenance Mats & Svcs	6,132	6,091	5,939	7,000	7,172
024-1205-542.29-00	Other Materials Supplies	10,340	8,862	7,944	11,435	8,945
024-1205-542.30-01	Insurance	2,141	3,577	2,831	5,172	4,858
024-1205-542.38-00	Support Services	4,911	5,308	5,308	8,587	6,388
024-1205-542.45-00	Facilities Maint Charge	5,053	4,419	4,419	5,313	4,744
024-1205-543.43-00	Machinery/Equipment	-	400	400	5,400	5,161
024-1205-549-12-00	Telephone	-	-	-	-	-
024-1205-549.17-00	Professional Services	-	1,233	1,233	211	211
024-1205-549.25-00	Maintenance Mats & Svcs	65	189	188	-	-
024-1205-549.29-00	Other Materials Supplies	892	2,254	2,254	-	-
	Personnel & Supply Expenses	211,524	186,718	174,069	223,343	199,348
	2005-2015 Cumulative					
024-1201 & 1205-5XX	Administrative Expense	5,070	4,768	4,768	9,119	9,119
	Total Expense	216,594	191,486	178,837	232,462	208,467
	One-Third of Total Expense	72,198	63,829	59,612	77,487	69,489
024-1205-360.02-01	Zoo Society Contribution	70,471	58,125	58,125	79,183	79,183
	Difference Between One-Third Expense and Contribution	1,727	5,704	1,487	(1,696)	(9,694)

City of Merced
Zoo Expenditures
1994 thru 2015

Account Number	Element	2008		2007		2006	
		Budget	Actual	Budget	Actual	Budget	Actual
024-1205-541.01-00	Regular Salaries	89,008	85,874	77,108	78,061	73,711	73,710
024-1205-541.03-00	Extra Help	16,987	15,976	16,271	15,813	12,302	12,302
024-1205-541.04-01	Regular Overtime	5,723	5,477	5,851	5,673	533	418
024-1205-541.04-04	Call Back Time Worked	-	-	-	-	-	-
024-1205-541.10-01	Holiday Pay	3,088	3,050	2,669	2,478	2,532	2,172
024-1205-541.10-05	Retirement PERS	14,706	12,819	11,200	11,164	9,636	9,636
024-1205-541.10-06	Social Security-OASDI	5,922	5,091	5,362	5,515	4,930	4,929
024-1205-541.10-07	Social Security-Medicare	1,589	1,419	1,530	1,519	1,332	1,332
024-1205-541.10-12	Workers Compensation	7,711	7,711	3,737	3,737	2,088	2,088
024-1205-541.10-20	Earned Benefit	4,508	2,816	4,950	3,099	2,886	2,886
024-1205-541.10-27	PTS Plan FICA Alternative	224	208	232	214	161	160
024-1205-541.10-33	Core Allowance	21,883	21,883	-	-	-	-
024-1205-542.11-00	Utilities	5,475	3,474	5,000	4,742	6,300	5,874
024-1205-542.12-00	Telephone	1,682	959	1,132	1,110	1,043	629
024-1205-542.17-00	Professional Services	6,030	3,051	5,600	3,634	8,870	6,352
024-1205-542.24-00	Memberships, Subscription	959	842	859	859	1,030	921
024-1205-542.25-00	Maintenance Mats & Svcs	7,341	6,283	8,430	8,149	7,880	7,782
024-1205-542.29-00	Other Materials Supplies	9,300	9,123	8,800	8,318	8,500	6,554
024-1205-542.30-01	Insurance	3,370	3,370	2,842	2,842	5,756	5,756
024-1205-542.38-00	Support Services	8,480	8,480	12,942	12,942	8,856	8,856
024-1205-542.45-00	Facilities Maint Charge	6,625	6,625	7,324	7,324	4,250	4,250
024-1205-543.43-00	Machinery/Equipment	-	-	-	-	500	500
024-1205-549-12-00	Telephone	-	-	-	-	-	-
024-1205-549.17-00	Professional Services	87	-	2,009	1,978	2,490	2,489
024-1205-549.25-00	Maintenance Mats & Svcs	161	160	-	-	39	38
024-1205-549.29-00	Other Materials Supplies	-	-	-	-	808	808
	Personnel & Supply Expenses	221,913	205,613	361,781	227,390	187,945	181,247
	2005-2015 Cumulative						
024-1201 & 1205-5XX	Administrative Expense	23,459	23,459	20,718	20,718	13,880	13,880
	Total Expense	245,372	229,072	382,499	248,108	201,825	195,127
	One-Third of Total Expense	81,791	76,357	127,500	82,703	67,275	65,042
024-1205-360.02-01	Zoo Society Contribution	82,209	79,408	155,210	73,677	65,328	64,360
	Difference Between One-Third Expense and Contribution	(418)	(3,051)	(27,710)	9,026	1,947	682

City of Merced
Zoo Expenditures
1994 thru 2015

		2005	
Account Number	Element	Budget	Actual
024-1205-541.01-00	Regular Salaries	60,816	58,096
024-1205-541.03-00	Extra Help	22,941	21,942
024-1205-541.04-01	Regular Overtime	3,679	3,679
024-1205-541.04-04	Call Back Time Worked	-	-
024-1205-541.10-01	Holiday Pay	2,547	2,546
024-1205-541.10-05	Retirement PERS	5,119	3,881
024-1205-541.10-06	Social Security-OASDI	5,093	4,071
024-1205-541.10-07	Social Security-Medicare	1,338	1,271
024-1205-541.10-12	Workers Compensation	33,208	33,208
024-1205-541.10-20	Earned Benefit	2,494	1,610
024-1205-541.10-27	PTS Plan FICA Alternative	327	286
024-1205-541.10-33	Core Allowance	-	-
024-1205-542.11-00	Utilities	3,600	3,228
024-1205-542.12-00	Telephone	1,548	933
024-1205-542.17-00	Professional Services	10,000	7,317
024-1205-542.24-00	Memberships, Subscription	955	886
024-1205-542.25-00	Maintenance Mats & Svcs	7,900	7,830
024-1205-542.29-00	Other Materials Supplies	9,100	6,541
024-1205-542.30-01	Insurance	3,331	3,331
024-1205-542.38-00	Support Services	9,077	9,077
024-1205-542.45-00	Facilities Maint Charge	12,250	12,250
024-1205-543.43-00	Machinery/Equipment	500	215
024-1205-549-12-00	Telephone	-	-
024-1205-549.17-00	Professional Services	464	463
024-1205-549.25-00	Maintenance Mats & Svcs	61	60
024-1205-549.29-00	Other Materials Supplies	995	994
	Personnel & Supply Expenses	226,519	210,331
	2005-2015 Cumulative		
024-1201 & 1205-5XX	Administrative Expense	11,792	11,792
	Total Expense	238,311	222,123
	One-Third of Total Expense	79,437	74,041
024-1205-360.02-01	Zoo Society Contribution	59,475	67,688
	Difference Between One-Third Expense and Contribution	19,962	6,353



ADMINISTRATIVE REPORT

Agenda Item K.12.

Meeting Date: 12/7/2015

Report Prepared by: Deneen Proctor, Director of Support Services, Department of Support Services

SUBJECT: Minimum Wage Increase

REPORT IN BRIEF

Approve minimum wage in accordance with Minimum Wage Order MW-2014 and salaries tied to minimum wage.

RECOMMENDATION

City Council - Adopt **Resolution 2015-46**, a Resolution of the City Council of the City of Merced, California, amending the salary ranges for the temporary classifications of Lifeguard I, Lifeguard II, Pool Manager, Recreation Coordinator, Recreation Leader, and Recreation Specialist; and, authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve as recommended,
2. Deny; or
3. Refer to staff for further authority.

AUTHORITY

State of California Industrial Welfare Commission (IWC) Minimum Wage Order MW-2014 in accordance with Assembly Bill 10 (AB10).

CITY COUNCIL PRIORITIES

As provided for in the 2015-2016 Fiscal Year Budget.

DISCUSSION

On September 23, 2013 Jerry Brown signed legislation raising the minimum wage in California from \$8.00 per hour to \$9.00 per hour effective July 1, 2014. Pursuant to its authority under the Labor Code and the Constitution of the State of California, the State of California IWC adopted the Minimum Wage Order MW-2014 increasing the minimum wage in California effective July 1, 2014 to \$9.00 per hour, and again on January 1, 2016 to \$10.00 per hour.

At the time of the legislation the City had temporary and seasonal employees in the Salary plan that were paid the current minimum wage or whose salary ranges would fall below the newly increased minimum wage. These positions will be in the same circumstance with the January 1, 2016 minimum wage increase.

The impacted positions are Temporary Recreation Leader, Temporary Recreation Specialist, Temporary Recreation Coordinator, Temporary Lifeguard I, Temporary Lifeguard II, and Temporary Pool Manager. These positions are assigned to the Recreation Department and are vital to providing services to the community throughout the year by assisting full-time Recreation Staff in providing excellent recreation programming to the citizens.

IMPACT ON CITY RESOURCES

No additional appropriations are necessary.

ATTACHMENTS

1. Resolution

RESOLUTION NO. 2015-_____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING THE SALARY RANGE FOR THE
TEMPORARY CLASSIFICATIONS OF
LIFEGUARD I, LIFEGUARD II, POOL
MANAGER, RECREATION COORDINATOR,
RECREATION LEADER, AND RECREATION
SPECIALIST**

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

SECTION 1. The Classification Plan of the City of Merced is hereby amended by changing the minimum salary for the temporary classifications of Lifeguard I, Lifeguard II, Pool Manager, Recreation Coordinator, Recreation Leader, and Recreation Specialist as shown in Exhibit "A" attached hereto.

SECTION 2. This Resolution shall be effective as of January 1, 2016.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2015, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

Kelly Fincher 11/30/15
City Attorney Date

INCREASES TO GRADE STEP TABLE - MINIMUM WAGE INCREASE EFFECTIVE JANUARY 1, 2016

TEMPORARY POSITIONS			HOURLY RATE EFFECTIVE 7/1/2014					HOURLY RATE EFFECTIVE 1/1/2016						
Class	Grade	Title	Step 1	Step 2	Step 3	Step 4	Step 5	Percent	Step 1	Step 2	Step 3	Step 4	Step 5	Percent
9155	2	RECREATION LEADER	9,0000	9,4500	9,9225	10,4186	10,9396		10,0000	10,5000	11,0250	11,5763	12,1551	
9156	4	RECREATION SPECIALIST	9,9180	10,4139	10,9346	11,4813	12,0554	1,102	11,0200	11,5710	12,1496	12,7570	13,3949	1,102
9151	8	RECREATION COORDINATOR	12,3320	12,9486	13,5961	14,2759	14,9897	1,243	13,7023	14,3874	15,1068	15,8621	16,6552	1,243
9085	3	LIFEGUARD I	9,6680	10,1493	10,6568	11,1896	11,7491	1,074	10,7400	11,2770	11,8409	12,4329	13,0545	1,074
9086	5	LIFEGUARD II	10,6519	11,1845	11,7438	12,3309	12,9475	1,102	11,8355	12,4273	13,0486	13,7010	14,3861	1,102
9140	8	POOL MANAGER	12,3320	12,9486	13,5960	14,2758	14,9896	1,158	13,7023	14,3874	15,1068	15,8621	16,6552	1,158

Prepared by: Joni Vieira
10/27/2015



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.13.

Meeting Date: 12/7/2015

Report Prepared by: *Ken Elwin, City Engineer/Interim Public Works Director*
David Gonzalves, Director of Development Services/Chief Building Official, Development Services Department

SUBJECT: Revise Personnel Allocation in Engineering Division of the Development Services Department by Deleting One Engineering Technician III/IV position and Adding One Senior Engineer Position to the Engineering Division of the Development Services Department.

REPORT IN BRIEF

The action requested is to staff the department appropriately for the planned upcoming projects in the City.

RECOMMENDATION

City Council - Adopt **Resolution 2015-44**, A Resolution of the City Council of the City of Merced, California, Amending the Classification Plan by Amending the Personnel Allocation in the Engineering Division of the Development Services Department by Deleting One Engineering Technician III/IV and Adding One Senior Engineer.

ALTERNATIVES

1. Approve as recommended; or
2. Deny, or
3. Refer to staff for further study, or
4. Take no action

AUTHORITY

Article VII, Section 710, of the Merced City Charter.

CITY COUNCIL PRIORITIES

As provided for in the 2015-16 Adopted Budget.

DISCUSSION

The vacant Engineering Technician III/IV position in the Engineering Division resulted from a recent retirement. The Engineering Technician Series goes from I - IV and tops out at IV. The classification series is not a direct career path to becoming a licensed engineer. The department has determined that with only two licensed engineers on staff at this time it is a priority to increase the number of licensed engineers on staff.

IMPACT ON CITY RESOURCES

No additional appropriations will be necessary for this action.

ATTACHMENTS

Resolution

RESOLUTION NO. 2015-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING THE CLASSIFICATION PLAN BY AMENDING THE PERSONNEL ALLOCATION IN THE ENGINEERING DIVISION OF THE DEVELOPMENT SERVICES DEPARTMENT BY DELETING ONE ENGINEERING TECHNICIAN III/IV POSITION AND ADDING ONE SENIOR ENGINEER POSITION

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

SECTION 1. The Classification Plan of the City of Merced is hereby amended by amending the personnel allocation in the Engineering Division of the Development Services Department by deleting one Engineering Technician III/IV position and adding one Senior Engineer position.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2015, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

Kelly Fisher 11/16/15
City Attorney Date



ADMINISTRATIVE REPORT

Agenda Item K.14.

Meeting Date: 12/7/2015

Report Prepared by: Mark E. Hamilton, Housing Program Supervisor, Housing Division, Department of Economic Development

SUBJECT: Allocation of Fiscal Year 2015-16 Community Development Block Grant (CDBG) Funds for a Warming Center with Merced County Rescue Mission

REPORT IN BRIEF

Contract authorization between the City of Merced and Merced County Rescue Mission for the operation of a community Warming Center.

RECOMMENDATION

City Council - Adopt a motion approving the allocation of \$13,000 of Community Development Block Grant funds to assist with the cost of operating a warming center; and authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to other than recommended by staff (identify specific findings and/or conditions amended to be addressed in City Council motion); or,
3. Deny; or,
4. Refer to City Manager for reconsideration of specific items (specific items to be addressed in City Council motion); or,
5. Continue to a future City Council meeting (date and time to be specified in City Council motion).

AUTHORITY

Department of Housing and Urban Development (HUD) allows participating jurisdictions to fund community organizations with Community Development Block Grant (CDBG) funds per 24 CFR 570.201 and 42 USC 5305.

CITY COUNCIL PRIORITIES

"As directed by Council at the November 16, 2015 City Council meeting."

DISCUSSION

At the City Council meeting of November 16, 2015, the City Council directed the City Manager and staff to evaluate locations for a warming center. With the assistance of the Merced County Rescue Mission, the warming center will be operated within a portion of the building located at 2212 Cherry

Avenue (Attachment 2).

The warming center would to be operated from December 2015 through April 2016. The Rescue Mission is requesting \$13,000 to cover costs associated with operating a warming center at this location. New this year is the request for \$10,400 to cover labor costs necessary to staff the facility (Attachment 1). In addition to the labor costs, the request includes \$2,100 to reimburse utility costs and \$500 for miscellaneous expenses.

The church is not charging the Rescue Mission for the use of the facility. The Rescue Mission will ensure the warming center is open on evenings when the 'D' Street shelter is full and the weather forecast anticipates either rain or temperatures below 40 degrees. The state standard is 3 consecutive evenings of 32 degrees or below.

With the execution of the attached agreement, Community Development Block Grant funds will be allocated towards the operation of a warming center facility. The warming center will be fully operational because of funding from the City.

DESCRIPTION

The approved 2016 HUD Annual Plan sets aside funds for eligible public service activities. The operation of the Warming Center would be considered eligible because the activity meets a national objective serving individuals with low-moderate incomes.

The Rescue Mission will need approximately \$13,000 to cover anticipated costs as follows:

<u>Line Item</u>	<u>Amount:</u>
Utilities	\$2,100
Labor Costs	\$10,400
<u>Misc. Expenses</u>	<u>\$500</u>
TOTAL	\$13,000

IMPACT ON CITY RESOURCES

There is no impact to the City's General Fund. Warming Center costs are eligible for reimbursement per the Department of Housing and Community Development. Staff recommends the Council authorize the City Manager to execute the contract with Merced County Rescue Mission.

ATTACHMENTS

1. Agreement with Merced Rescue Mission
2. Warming Center Location Map

**Agreement between the
City of Merced
AND
Merced County Rescue Mission
For the Operation of a Warming Center**

THIS AGREEMENT, entered this ____ day of ____, 2015 by and between the City of Merced (herein called the “Grantee”) and Merced County Rescue Mission (herein called the “Subrecipient”).

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG Year 2015-16 Warming Center in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Program Delivery

Activity: The Subrecipient will be responsible for administering a CDBG Year 2015-16 activity grant of \$13,000 to provide a warming shelter in Merced for the months of December, January, February, March and April. The activity includes reimbursement to the Merced County Rescue Mission for labor costs, utilities, and miscellaneous expenses necessary to operate a homeless warming center within the community.

The Rescue Mission will be required to document homeless individuals using the facility and provide receipts for all expenses which are being reimbursed under this Agreement. Monthly reporting and monitoring will be part of the 4-5 month program. In order for the labor costs associated with the operation of the warming center, the grantee will be required to submit the associated timesheets and payroll documentation of the sub-recipient’s employees receiving compensation. Each

timesheet will be required to minimally include the employee's name, days worked, location address, and number of hours. Changes in the scope of services, budget, or method of compensation contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and Grantee.

B. National Objectives

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives; benefit low-and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Subrecipient certifies that the activities carried out under this Agreement will meet the National Objective to benefit low- and moderate-income persons.

In meeting this objective, all participants in the program will provide proof of income eligibility using **a)** income tax returns **b)** proof they reside in a Census Tract recognized as low-and-moderate-income eligible or **c)** certification of homelessness (HMIS) in the City of Merced.

C. Levels of Accomplishment – Goals and Performance Measures

The Subrecipient agrees to provide the following levels of program services:

<u>Activity</u>	No. of days open	No. of Men	No. of Female	No. of Children	Race of Client*	Ethnicity Hispanic or Non-Hispanic	No. of Total clients	No. of repeat clients	Veteran Yes or No
December									
January									
February									
March									
April									
Total									

*Race: White, Black, Asian, Hispanic

To show a positive outcome, Subrecipient will set goals showing number of individuals being served each month, number requiring additional services and services they were referred to for assistance.

D. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performances standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start in December 2015 and end in April 2016. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

<u>Line Item</u>	<u>Amount:</u>
Utilities	\$2,100
Labor Costs	\$10,400
<u>Misc. Expenses</u>	<u>\$500</u>
TOTAL	\$13,000

Any indirect costs charged must be consistent with the conditions of Section VII of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$13,000. Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Section III herein and in accordance with performance. Each draw-down request shall be accompanied with a report itemizing all program expenses, previously drawn program grant funds and amount of program funds being requested.

V. Notices

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communications and details concerning this contract shall be directed to the following contract representatives:

Grantee

Subrecipient

Mark Hamilton
Housing Program Supervisor

Bruce Metcalf
Executive Director

Grantee: City of Merced

Subrecipient: Merced County Rescue Mission

Address: 678 West 18th Street

Address: 1921 Canal Street

Merced, CA 95340

Merced, CA 95350

209-385-6863 (Office)

209-722-9269 (Office)

209-388-8987 (E-Fax)

209-480-3899 (Cell)

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VII. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

B. Conformance to Applicable Laws. Contractor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons to work under this agreement because of race, color, national origin, ancestry disability, sex, or religion of such person.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or service by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Contractor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

C. Waiver. In the event that earlier City or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

D. Inconsistent or Conflicting Terms in Agreement and Exhibits. In the event of any contradiction or inconsistency between any attached documents(s) or exhibits(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

E. Ambiguities. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

F. Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

G. Amendment. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

H. Integration. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

I. Authority to Execute. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

J. Counterparts. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

VIII. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

Date

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

[Grantee]

[Subrecipient]

By _____
City Manager

By _____
Executive Director

Attest _____
CITY CLERK

Countersigned: _____ By _____
FINANCE OFFICER

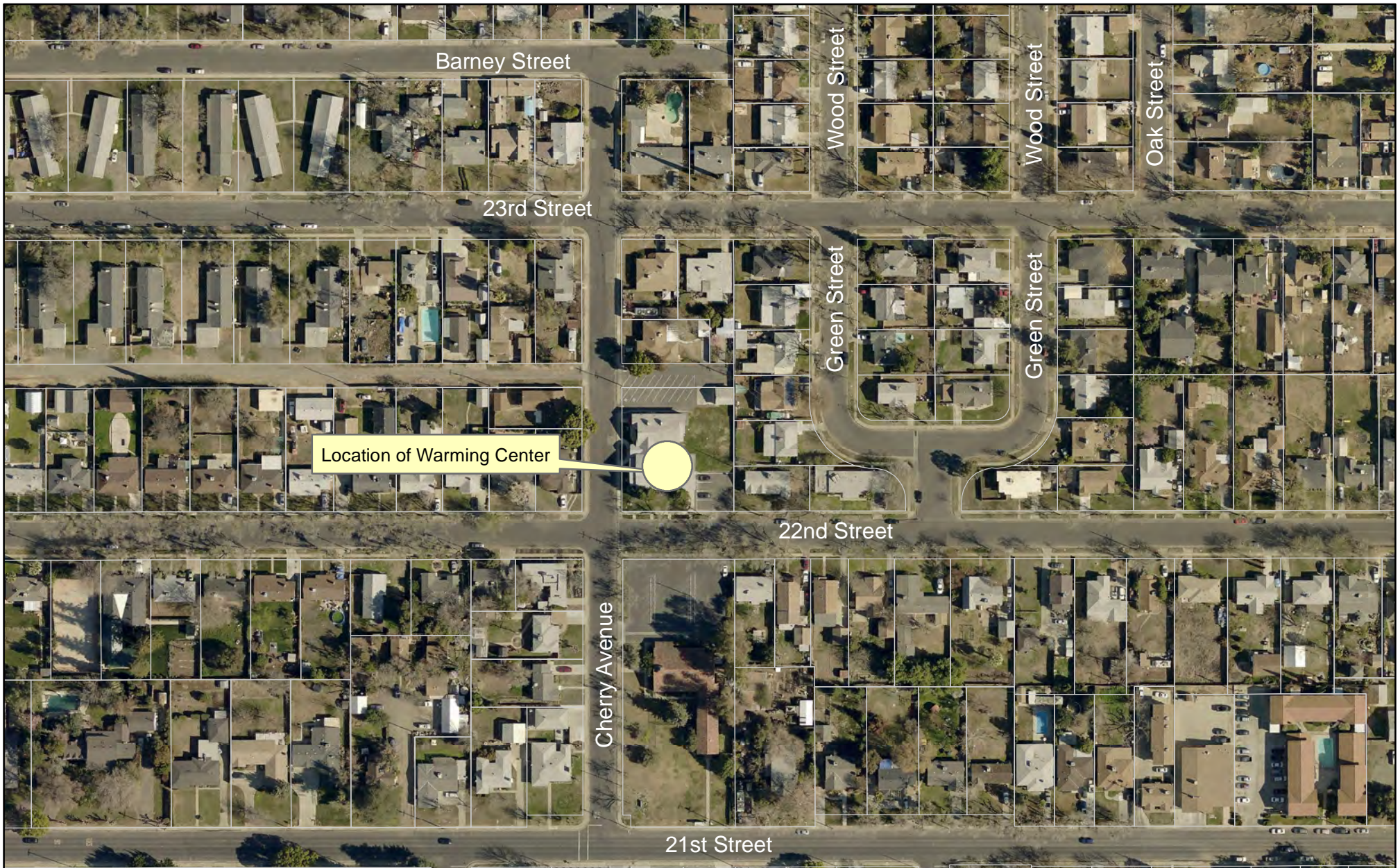
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Fed. I. D. # _____

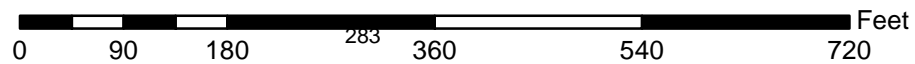
Kelly Fincher

CITY ATTORNEY

Rescue Mission - Warming Center



Attachment 2





ADMINISTRATIVE REPORT

Agenda Item L.1.

Meeting Date: 12/7/2015

Report Prepared by: Julie Nelson, Associate Planner, Planning Department

SUBJECT: Public Hearing - Vacation 15-01 to Abandon a Portion of a Public Utilities Easement Located Along the East Property Line of 2936 Crestwood Court

REPORT IN BRIEF

The City Council will consider the abandonment of approximately 620 square feet of an existing public utilities easement along the eastern property line of the property located at 2936 Crestwood Court.

RECOMMENDATION

City Council - Adopt a motion approving **Resolution 2015-45**, A Resolution of the City Council of the City of Merced, California ordering the vacation of a portion of a public utilities easement located along the east property line of the property located at 2936 Crestwood Court (Vacation #15-01).

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to modifications as conditioned by Council; or,
3. Deny based on specific findings; or,
4. Refer back to staff for reconsideration of specific items as requested by Council; or,
5. Continue to a future meeting (date and time to be specified in Council motion).

AUTHORITY

Part 3, Chapter 3 of the Streets and Highways Code of the State of California authorizes the City Council to vacate a right-of-way or easement. The vacation shall be made by adoption of a resolution pursuant to Section 8335 of the Code, and shall be recorded pursuant to Section 8336. The City of Merced Administrative Policies and Procedures No. A-6 provides direction to staff for processing street vacation requests, and City Resolution 86-80 establishes a policy concerning costs associated with the vacation.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The property owner is requesting the vacation of a 10-foot wide Public Utilities Easement that runs north and south along the east property line of their property located at 2936 Crestwood Court (Attachment 1). The easement area is approximately 620 square feet and was dedicated by the

Final Map for Wainwrights Bear Creek Village No. 4 in 1969.

The property owners are installing a pool in their backyard and this easement prohibits them from placing the pool within 5-feet of the eastern property line (as allowed by the Zoning Ordinance). With the easement, the pool would have to be at least 10 feet from the eastern property line which would not leave enough room for the pool within the backyard.

City staff has contacted all utility companies and has determined the easement is not being used and they have no plans to use the easement in the future. Therefore, this easement is no longer needed and should be abandoned to give the property owners full use of their property.

History and Past Actions:

At the Planning Commission meeting on October 21, 2015, the Planning Commission reviewed the vacation for consistency with the City's General Plan and found, by unanimous vote, that the proposed vacation does not conflict with any General Plan policies, text, or maps, and is, therefore, consistent with the General Plan.

On November 4, 2015, the City Council adopted a Resolution of Intention (Resolution #2015-42 - Attachment 2) and set December 7, 2015, as the date for the public hearing to consider Vacation #15-01.

Recommendation

Staff is recommending the adoption of the Resolution at Attachment 3 to abandon approximately 620 square feet of a public utilities easement along the east property line of the property located at 2936 Crestwood Court.

ATTACHMENTS

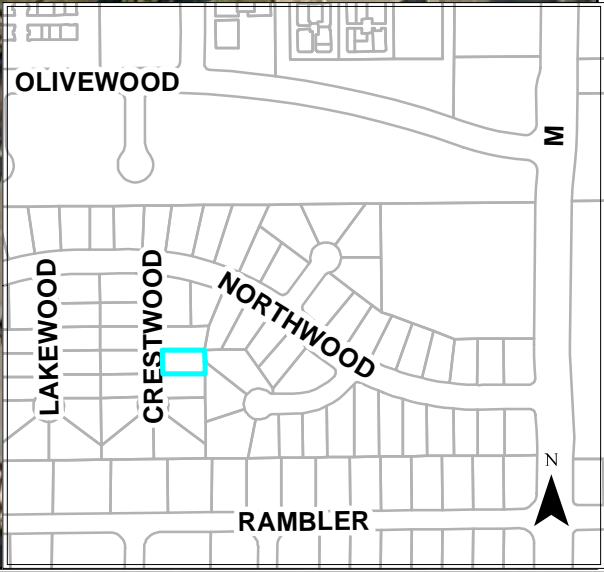
1. Location Map and easement area
2. City Council Resolution 2015-42
3. Draft City Council Resolution approving vacation of the easement area

VACATION #15-01
2936 CRESTWOOD COURT



10-Foot Public Utilities Easement to be abandoned.

CRESTWOOD



RESOLUTION NO. 2015-42

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
DECLARING ITS INTENTION TO VACATE A
PORTION OF A PUBLIC UTILITIES EASEMENT
(VACATION 15-01) LOCATED ALONG THE EAST
PROPERTY LINE OF THE PROPERTY LOCATED
AT 2936 CRESTWOOD COURT AND SETTING A
TIME AND PLACE FOR PUBLIC HEARING**

WHEREAS, the City Engineer of the City of Merced has recommended that the hereinafter described portion of public right-of-way is unnecessary for prospective public purposes, except for the reservation of public utilities easements; and

WHEREAS, the City Engineer has filed maps or plans with the City Clerk of the City of Merced showing the portion of the public utilities easement to be vacated at a specific time that will be determined.

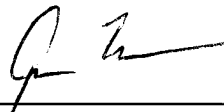
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Merced declares its intention to proceed under the provisions of Part 3 of the Streets and Highways Code of the State of California, being the Public Streets, Highways, and Service Easements Vacation Law, Chapter 3, to vacate a portion of public utilities easement in the City of Merced consisting of approximately 620 square feet (10 feet by 62 feet) located along the eastern property line of the property located at 2936 Crestwood Court, as described in Exhibit "A" and shown in Exhibit "B" attached hereto and incorporated herein by this reference.

SECTION 2. Reference is made to the maps and plans which are filed in the office of the City Clerk of the City of Merced for further particulars as to the proposed vacation and reservation.


SECTION 3. December 7, 2015, at the hour of 7:00 p.m. of said day in the Council Chamber of the City Council, 678 West 18th Street, Merced, California, is

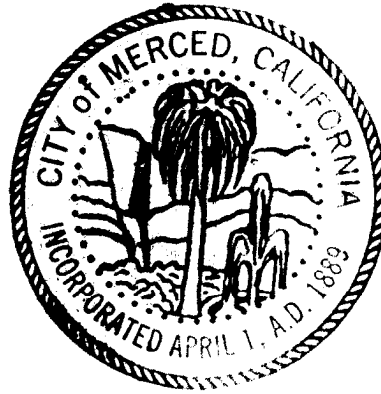
ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: 
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY


City Attorney Date



10/9/2015
150382

EXHIBIT "A"

Being a portion of Lot 64 as shown on "Wainwrights Bear Creek Village No. 4", recorded in Volume 19 of Official Plats at page 1, 2 and 3, Merced County Records, lying in the northwest quarter of Section 19, Township 7 South, Range 14 East, Mount Diablo Meridian, in the City of Merced, County of Merced and State of California, being more particularly described as follows:

The east 10.00 feet of said Lot 64 shown as a 10.00 foot wide Public Utilities Easement on said map.

Containing 620 square feet more or less.

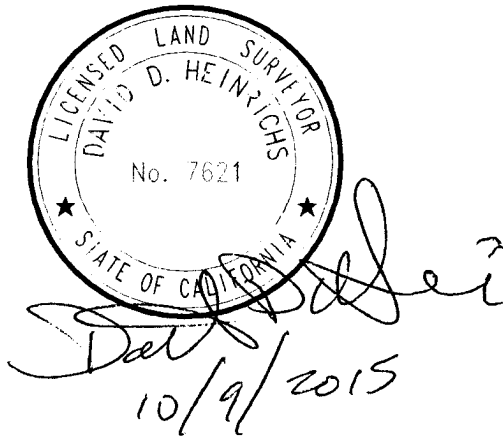
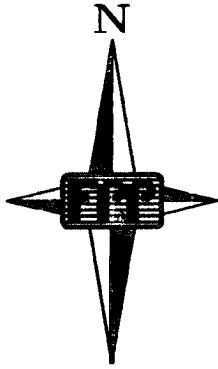


EXHIBIT "B"



SCALE 1" = 20'

LOT 63
19 O.P. 1
M.C.R. 1

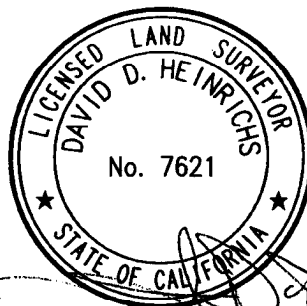
CRESTWOOD COURT

LOT 64
19 O.P. 1
M.C.R. 1

EAST 10' OF LOT 64

EXISTING P.U.E. TO BE ABANDONED

LOT 65
19 O.P. 1
M.C.R. 1



[Handwritten Signature]
10/9/2015

150382
10/9/2015

RESOLUTION NO. 2015-____

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MERCED, CALIFORNIA
ORDERING THE VACATION OF A
PORTION OF A PUBLIC UTILITIES
EASEMENT LOCATED ALONG THE EAST
PROPERTY LINE OF THE PROPERTY
LOCATED AT 2936 CRESTWOOD COURT
(VACATION #15-01)**

WHEREAS, by adoption of Resolution No. 2015-42 on November 2, 2015, the City Council declared its intention to consider the vacation of a portion of a public utilities easement in the City of Merced, consisting of approximately 620 square feet (10 feet by 62 feet) located along the eastern property line of the property located at 2936 Crestwood Court, and more particularly described in Exhibit A and shown in Exhibit B, attached hereto and incorporated herein by this reference, and set a public hearing thereon; and

WHEREAS, Resolution No. 2015-42 fixed a time and place for hearing all persons interested in or objecting to the proposed vacation to wit: On Monday, December 7, 2015, at the hour of 7:00 p.m. of said day, in the Council Chambers of the City Council, 678 West 18th Street, Merced, California, which said time was not less than fifteen (15) days from the above-mentioned date and passage of Resolution No. 2015-42; and

WHEREAS, Resolution No. 2015-42 was published in the manner prescribed by Section 8320 of the Streets and Highways Code of the State of California; and

WHEREAS, the public hearing occurred on December 7, 2015; and

WHEREAS, On November 4, 2015, notices were conspicuously posted along the lines of the public street proposed to be vacated, not more than three hundred (300) feet apart, which notices consisted of copies of Resolution No. 2015-42; and

WHEREAS, the vacation of the public utilities easement as proposed by Resolution No. 2015-42 was submitted to the Planning Commission on October 21, 2015, which found the proposed vacation to be in conformity with the general plan.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council finds from all of the evidence submitted that the portion of the public utilities easement in the City of Merced, as described on Exhibit A and shown on Exhibit B, is unnecessary for present or prospective public utilities easement purposes.

SECTION 2. It is hereby ordered that the portion of the easement lying within the above described territory be and the same is hereby abandoned and vacated, pursuant to the provisions of Part 3, Division 9, of the Streets and Highways Code of the State of California, being the Public Streets, Highways, and Services Easements Vacation Law.

SECTION 3. The City Clerk is directed to cause a certified copy of this resolution, attested under seal of the City of Merced, to be recorded in the Office of the County Recorder of Merced County.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ of _____, 2015, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

BY: Ken Rye 11/10/15
City Attorney Date

10/9/2015
150382

EXHIBIT "A"

Being a portion of Lot 64 as shown on "Wainwrights Bear Creek Village No. 4", recorded in Volume 19 of Official Plats at page 1, 2 and 3, Merced County Records, lying in the northwest quarter of Section 19, Township 7 South, Range 14 East, Mount Diablo Meridian, in the City of Merced, County of Merced and State of California, being more particularly described as follows:

The east 10.00 feet of said Lot 64 shown as a 10.00 foot wide Public Utilities Easement on said map.

Containing 620 square feet more or less.



EXHIBIT "B"



SCALE 1" = 20'

LOT 63
19 O.P. 1
M.C.R. 1

CRESTWOOD COURT

LOT 64
19 O.P. 1
M.C.R. 1

EAST 10' OF LOT 64

EXISTING P.U.E. TO BE ABANDONED

LOT 65
19 O.P. 1
M.C.R. 1



David D. Heinrichs
10/9/2015

150382
10/9/2015



ADMINISTRATIVE REPORT

Agenda Item L.2.

Meeting Date: 12/7/2015

Report Prepared by: *Kenneth Rozell, Senior Deputy City Attorney*

SUBJECT: Public Hearing Regarding Proposed Changes to the Massage Establishment Regulations and Specific Zoning Provisions Relating to Massage Uses

REPORT IN BRIEF

Consider amendments to the Chapter 5.44 of the Merced Municipal Code relating to massage establishments and amendments to the Zoning Ordinance (Title 20) relating to massage uses.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving Environmental Review #14-25 (Categorical exemption); and,
- B. Introducing **Ordinance 2451**, an Ordinance of the City Council of the City of Merced, California Amending Chapter 5.44, "Massage Establishments," of the Merced Municipal Code; and,
- C. Introducing **Ordinance 2452**, an Ordinance of the City Council of the City of Merced, California Amending Sections 20.20.020, "Permitted Uses," 20.20.040, "Conditional Uses," 20.22.020, "Permitted Uses," 20.22.050, "Conditional Uses," 20.24.020, "Permitted Uses," 20.24.040, "Conditional Uses," 20.26.040, "Conditional Uses," and 20.28.040, "Conditional Uses," of the Merced Municipal Code Regarding the Zoning of Massage Establishments as Conditional Uses Subject to Specific Conditions.

ALTERNATIVES

- 1. Approve, as recommended by the Planning Commission and staff; or,
- 2. Deny; or,
- 3. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
- 4. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

City of Merced Charter, Section 200

CITY COUNCIL PRIORITIES

N/A

DISCUSSION

Background

For many years, there was no state-wide regulation of massage professionals or massage businesses, with regulations varying from jurisdiction to jurisdiction. In the City of Merced, individuals who wished to perform massage or bodywork services first have had to obtain a permit from City of Merced before they could provide this service (with certain limited exceptions). In order to obtain this permit, each applicant first had to go through an extensive background check conducted by the City that included a criminal background check and fingerprinting. In addition, before a massage establishment could be opened in the City, the owners of the proposed facility had to go through a similar approval process and obtain a conditional use permit if they wished to locate in the General Commercial (C-G) or Thoroughfare Commercial (C-T) zones.

In 2008, a state-wide massage organization lobbied for a process that would preempt local licensing and zoning regulations (such as the ones that the City of Merced had) so that a massage practitioner would only need one state certificate to provide massage services throughout the State of California. The bill was originally intended to professionalize the massage industry and ensure that massage therapists were treated the same as other professional service providers.

The Legislature adopted SB 731 in 2008, which (beginning on September 1, 2009) took away the rights of cities and counties in California to regulate those practicing massage if they had a state-issued massage certification. In addition, SB 731 took away the rights of cities and counties to impose almost all land use regulations on massage uses.

The loss of local control of massage establishments had an almost immediate negative impacts on cities throughout the state. In larger cities, numerous new massage establishments opened -- many of which were thinly disguised fronts for prostitution. Because the state had preempted almost all local land use authority for massage establishments, cities had a very difficult time in regulating and enforcing laws to ensure that the rapidly opening establishments did not violate the law. While the vast majority of massage practitioners provide only legitimate services (including the approximately 30 massage establishments who currently have licenses in Merced), the new rogue operators caused continuing bad publicity for legitimate massage practitioners throughout state.

The City of Merced experienced one such facility on 18th Street, which offered sexual services to customers (including undercover Merced police officers) before arrests were made at the facility. However, because state law preempted the City's land use authority, the City had limited ability to stop the facility from reopening with a new name after a new operator applied for another permit from the City. After much effort on the City's part, the City was able to permanently shut down this facility.

AB 1147

Finally, with substantial input from the League of California Cities and its member cities, the Legislature adopted AB 1147 in 2014 to address many of the issues caused by the prior legislation. Most importantly, AB 1174 returned land use authority over massage establishments and businesses to cities and counties so each public entity could properly regulate massage establishments within its

jurisdiction.

AB 1147 still exempts massage professionals from obtaining local licenses if they have a state-issued massage license. The owners and/or operators of a massage establishment are also exempt from obtaining a local license if they have a state-issued massage license. AB 1147, however, authorizes cities and counties to enforce local ordinances that govern business licensing, and reasonable health and safety requirements.

Proposed Amendments to Chapter 5.44 and Zoning Code

With the regained authority to regulate massage establishments, City staff have reviewed the existing provisions of Chapter 5.44 of the Merced Municipal Code relating to massage establishments and the City's Zoning Ordinance and prepared two sets of new regulations for the City Council's consideration.

As to Chapter 5.44 of the Merced Municipal Code, City staff have proposed a number of changes to streamline the massage regulations consistent with the changes in state law and to update a number of municipal code provisions, some of which have been in place for 40 years or more.

One key change that is being proposed is requiring that those individuals providing massage services within the City have a state-issued massage practitioner or massage therapist certificate (with certain limited exceptions). (Proposed amended MMC Section 5.44.100.) Those individuals who currently provide massage services pursuant to an existing City-issued massage technician permit could continue to do so until that permit expires. At that time, he or she would need to obtain a state-issued massage practitioner or massage therapist certificate in order to continue to act as a masseur, masseuse or massage/bodywork practitioner within the City. This proposed change would remove the Police Department from the administrative tasks of licensing (except in the narrow circumstance of an owner/operator not having a state massage license) and would free up police time for enforcement actions.

Another new provision would require each person providing massage services at a massage establishment to display his or her original certificate from the State of California as a massage practitioner or massage therapist. (Proposed amended MMC Section 5.44.220(A).) Upon the request of a member of law enforcement, each person providing massage services would need to provide his or her full name and certificate number from the State of California or unexpired permit from the City of Merced. (Proposed amended MMC Section 5.44.220(B).) This would allow the Police Department to easily determine if a massage practitioner is properly licensed to provide massage services.

Under the proposed changes to the Zoning Ordinance, massage therapy provided by a sole practitioner who has a valid State certificate as a massage practitioner or massage therapist would be a principally-permitted use in the Commercial Office (C-O), Neighborhood Commercial (C-N), and Central Commercial (C-C) zones under the proposed new Zoning Ordinance. Massage establishments are currently principally-permitted in those zones.

New massage establishments with two or more state-licensed massage practitioners or massage

therapists in the C-O, C-N or C-C would first need to obtain a conditional use permit before opening for business within those zones. This is a change from the current code, which staff believes will allow most State-licensed massage therapists doing business out of doctor's offices and beauty salons to continue to do so without undue restrictions.

All new massage establishments (including establishments run by a sole practitioner) in the General Commercial (C-G) and Thoroughfare Commercial (C-T) zones would need to first obtain a conditional use permit before opening for business in those zones.

The current Zoning Ordinance also requires a CUP for massage establishments in those zones.

In the C-O, C-N, C-C, C-G, and C-T zones, the following would be listed as conditionally permitted uses (requiring a Conditional Use Permit be issued by the Planning Commission): "Massage establishments, provided that a massage establishment permit has not been revoked at that location within 12 months from the date of the application for the CUP and a massage establishment permit is obtained pursuant to Chapter 5.44 of the Merced Municipal Code."

This provision will give the City more discretion in handling businesses that are not complying with the requirements of the City's Massage Establishment regulations (Chapter 5.44) and reopening under a different name at the same location. If this provision had been in place when the facility on 18th Street attempted to reopen, then there would have been clear grounds to deny the application to reopen at that location.

If the proposed amendments to the Zoning Code are adopted by the City Council, they would only affect new businesses or relocations of existing businesses. Current establishments with a valid City business license will be able to continue to operate a massage establishment at its current location without change. However, if the massage establishment chooses to relocate to another address within the City or add one or more additional massage therapists at the same address if they are currently operating as a sole practitioner, then they will be subject to the above requirements. Staff, however, will treat any conditional use permit as a minor use permit (current application fee of \$563) to minimize the costs to massage professionals within the City.

Finally, on November 3, 2015, City staff mailed letters and hearing notices to approximately 30 existing massage establishments that have current City business licenses. City staff has received a few responses from those establishments regarding the ordinance changes, mostly asking for information regarding how they would specifically be affected. However, the City did not receive any written comments on the proposed changes and no massage professional attended the public hearing before the Planning Commission on November 18, 2015.

On November 18, 2015, the Planning Commission held a public hearing on the proposed changes to the Zoning Ordinance. No one from the public testified at the hearing. The Planning Commission subsequently voted 7-0 (7 ayes, 0 noes) to recommend to the City Council approval of the amendments to the Zoning Ordinance.

Environmental Clearance

The Planning staff has conducted an environmental review (#14-25) of the project in accordance with

the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (see Attachment 5).

ATTACHMENTS

1. Ordinance amending Chapter 5.44
2. Redline of Ordinance amending Chapter 5.44
3. Massage Zoning Ordinance
4. Redline of Massage Zoning Ordinance
5. Environmental Review #14-25 (Categorical Exemption)
6. Planning Commission Staff Report
7. Planning Commission Resolution #3057

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 5.44, "MASSAGE
ESTABLISHMENTS," OF THE MERCED
MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS
FOLLOWS:

SECTION 1. AMENDMENT TO CODE. Chapter 5.44, "Massage
Establishments," of the Merced Municipal Code is hereby amended to read as
follows:

**"Chapter 5.44
MASSAGE ESTABLISHMENTS**

<u>Section:</u>	Title.
5.44.005	Title.
5.44.010	Findings and Purpose.
5.44.015	Definitions.
5.44.020	Massage or bodywork techniques.
5.44.030	Massage/bodywork establishment.
5.44.040	On-site therapy.
5.44.050	Outcall massage.
5.44.060	Masseur or masseuse— Massage/bodywork practitioner.
5.44.070	Person.
5.44.080	Health officer.
5.44.090	Bona fide nonprofit club.
5.44.100	Permit required.
5.44.110	Application fee—Operator.
5.44.120	Application fee—Massage establishment.
5.44.130	Verification.
5.44.140	Referral to other departments.
5.44.150	Issuance, refusal, revocation or suspension of permit.

- 5.44.160** Term of permit.
- 5.44.170** Sale, transfer, or change of location.
- 5.44.180** Massage establishment—Generally.
- 5.44.190** Massage establishment—Hours.
- 5.44.200** Outcall prohibition.
- 5.44.210** Locations—Prohibited.
- 5.44.220** Operating requirements.
- 5.44.230** Off-premises massage/bodywork.
- 5.44.240** Register and certificate numbers.
- 5.44.250** Persons employed under age eighteen not permitted.
- 5.44.260** Notices.
- 5.44.270** Inspection.
- 5.44.280** Persons employed without permits not allowed.
- 5.44.290** Exceptions.
- 5.44.300** Alcoholic beverages.
- 5.44.310** Violation—Penalty—Person with valid certificate or permit.
- 5.44.320** Violation—Penalty—Generally.

- 5.44.005** Title.

This chapter shall be known as the City of Merced ‘Massage Establishments Ordinance’ and may be cited as such.

5.44.010 Findings and Purpose.

The City Council finds and declares as follows:

- A. The City is authorized to regulate massage establishments pursuant to Government Code Section 51030 *et seq.*, Business and Professions Code Section 4600 *et seq.*, Article XI, Section 7 of the California Constitution and Section 200 of the City of Merced Charter.

B. The City wishes both to recognize the practice of massage as a valid professional field and to discourage unlawful activity that otherwise may become associated with some massage establishments.

C. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Merced.

5.44.015 Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in Sections 5.44.020 to 5.44.090.

5.44.020 Massage or bodywork techniques.

‘Massage techniques’ and ‘bodywork techniques’ mean any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of another human body with the use of the hands, arms, or other portions of the body, or with the aid of any mechanical or electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

5.44.030 Massage/bodywork establishment and massage establishment.

‘Massage/bodywork establishment’ and ‘massage establishment’ mean any establishment having a fixed place of business where any person, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, any of the massage

techniques and bodywork techniques described in Section 5.44.020 for compensation.

5.44.040 On-site therapy.

‘On-site therapy’ means any method of pressure on, or friction against, or stroking, kneading, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations, when the client remains fully clothed and at a location other than a massage/bodywork establishment, and is limited to business offices, sports complexes, convention centers, and public events.

5.44.050 Outcall massage.

‘Outcall massage’ means the engaging in or carrying on of massage techniques or bodywork techniques for a fee or consideration at a location other than at a duly licensed massage/bodywork establishment.

5.44.060 Masseur or masseuse-Massage/bodywork practitioner.

‘Masseur or masseuse-massage/bodywork practitioner’ and ‘massage/bodywork practitioner’ mean any natural person, other than a medical practitioner licensed by the State of California, who practices or administers any massage technique or bodywork technique in exchange for a fee, income, or anything of any value whatsoever within the City of Merced unless otherwise excepted.

5.44.070 Person.

‘Person’ means any individual, copartnership, partnership, firm, association, joint stock company,

corporation, or combination of individuals of whatever form or character.

5.44.080 Health officer.

‘Health officer’ means that person designated by the City of Merced as health officer or the authorized representative.

5.44.090 Bona fide nonprofit club.

‘Bona fide nonprofit club’ means any fraternal, charitable, religious, benevolent or any other nonprofit organization having a regular membership association primarily for mutual social, mental, political and civic welfare to which admission is limited to the members and guests and revenue accruing therefrom is to be used exclusively for the benevolent purposes of said organization and which organization or agency is exempt from taxation under the Internal Revenue Laws of the United States as a bona fide fraternal, charitable, religious, benevolent, or nonprofit organization and in which massage techniques are provided incidental to its primary operation.

5.44.100 Permit required.

A. Except as provided by Section 5.44.290 of this chapter, no person shall perform massage or bodywork techniques for a fee or any other consideration at a location outside a massage establishment as defined in this chapter.

B. It is unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code for any person to engage in, conduct, or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city the operation of a massage establishment as defined in this chapter without first

having obtained a permit from the city after approval by the requisite city officers.

C. It is unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code for any person to act as a masseur, masseuse, massage/bodywork practitioner or to take any other position of employment involving the performance of massages with a massage establishment, without having a valid and active certificate from the State of California as a massage practitioner or massage therapist. If, however, a person has a valid, unexpired massage technician permit from the City of Merced, that person may continue to perform such services at a massage establishment until such permit expires. Upon the expiration of said permit, the person shall cease all activities within the City of Merced as a massage/bodywork practitioner unless that person obtains and maintains a valid and active certificate from the State of California as a massage practitioner or massage therapist.

5.44.110 Application fee—Operator.

Every applicant for a permit to maintain, operate or conduct a massage establishment shall file an application with the finance officer upon a form provided and shall pay a filing fee of three hundred dollars (\$300.00) which shall not be refundable. ‘Applicant’ includes an individual owner, managing partner or corporate manager.

5.44.120 Application—Massage establishment.

A. An application for a permit to operate a massage establishment shall set forth the exact nature of the massage to be administered and the proposed place of business and facilities therefor.

B. If the applicant is a natural person who does not have a valid certificate from the State of California as a massage practitioner or massage therapist, then the application shall include the following information regarding that person:

1. The name and residence address including any other names by which the applicant has been known;
2. The two previous residence addresses immediately prior to the present residence address of the applicant;
3. Written proof that the applicant is at least eighteen years of age;
4. Business, occupation or employment of the applicant for the three years immediately preceding the date of application;
5. The applicant's height, weight, color of eyes and hair;
6. Two recent portrait photographs of the applicant, which photographs shall not exceed two inches square in size and shall be full front views of the face and head only;
7. The applicant's social security number and driver's license number, if any;
8. The massage or similar business license or permit history of the applicant; whether such person has previously operated in this or another city or state under license or permit; whether such person has had such license or permit revoked or suspended and the reason therefor; and the

business activity or occupation subsequent to such action of suspension or revocation;

9. Whether the applicant has ever been arrested for or convicted of:

i. An offense involving conduct which required registration as a sex offender pursuant to Penal Code Section 290,

ii. An offense involving the use of force and violence upon the person of another that amounts to a felony,

iii. An offense involving sexual misconduct with children,

iv. An offense as defined in California Penal Code Sections 220, 261, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 311, 314, 315, 316, 318, 647 subdivision (a), 647 subdivision (b) or 647 subdivision (d);

v. Conspiracy to violate any of the aforesaid sections of the California Penal Code, or

vi. The commission of the equivalent of any of the aforesaid crimes in a jurisdiction outside the state of California;

10. Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage

in prostitution, a statement must be made giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution;

11. Such other identification and information necessary to discover the truth of matters specified in this section as required to be set forth in the application;

12. The application shall be referred to the chief of police or his or her designee who shall have the right to confirm the identity of the applicant by taking fingerprints and additional photographs and shall have the right to confirm the criminal record of the applicant.

C. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown on its articles of incorporation together with the names and addresses of each of the officers, directors, and each stockholder holding more than ten percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the names and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply. The information specified in subsection (B) shall be provided for each officer, director, stockholder owning ten percent or more of the stock and/or partner who does not currently have a valid certificate from the State of California as a massage practitioner or massage therapist.

D. If the massage establishment is proposed to be located at a location that is not owned or leased by the applicant, then the application shall state the name of the person that owns property and, if not the same as the

property owner, the name of the person that is leasing or will be leasing the property to the applicant.

5.44.130 Verification.

Every application for a permit under this article shall be verified by affidavit or by declaration, or certification under penalty of perjury.

5.44.140 Referral to other departments.

Copies of an application for a massage establishment permit shall be referred to the building official, the fire chief, the health officer, the planning manager and the chief of police. These persons or their designated representative shall inspect the premises proposed to be operated as a massage establishment and shall make written recommendations to the finance officer concerning compliance with the codes that they administer.

5.44.150 Issuance, refusal, revocation or suspension of permit.

The finance officer or his or her designee shall issue or renew the massage establishment permit after the application has been reviewed and approved, except that for good cause the finance officer may refuse, revoke or suspend a permit for a massage establishment, with the grounds for action to be set forth in writing and delivered to the applicant or permittee:

A. That the operation as proposed by the applicant if permitted will not or does not comply with all applicable laws including, but not limited to, ordinances relating to building, health, planning, housing, zoning and fire protection, and other applicable codes which the city has a responsibility to administer including the regulations adopted by the health officer;

B. That the applicant or any other person who will be directly engaged in the management and operation of a massage establishment has been arrested or convicted of any of the offenses enumerated in subsection 5.44.120(B)(9) or convicted of an offense in another jurisdiction that is equivalent to the statutorily defined elements of the offenses listed in Section 5.44.120(b)(9);

C. A permit may be issued to any person arrested or convicted of any of the crimes described if such arrest or conviction occurred more than seven years prior to the date of the application and the applicant has had no subsequent felony arrests or convictions of any nature and no subsequent misdemeanor arrests or convictions for crimes mentioned in subsection 5.44.120(B)(9);

D. That the applicant has been licensed or registered in any state as a prostitute;

E. In any case where any of the provisions of this chapter are violated or where the permittee or any employee including a masseur or a masseuse is engaged in any conduct at a massage establishment which violates any federal, state or local law or ordinances;

F. In any case where the permittee of a massage establishment has actual or constructive knowledge of any violation of any state or local law or ordinances at the massage establishment;

G. In any case where such permittee or any other person acting on the permittee's behalf refuses to allow any duly authorized building inspector, police officer, fire inspector, health officer, or their designated representative to inspect the premises or the operations therein to ensure compliance with the provisions of this chapter and the Merced Municipal Code; or

H. Upon the recommendation of the health officer that such business is being managed, conducted, or maintained without regard for the public health, or for the health of patrons or customers, or without due regard to proper sanitation or hygiene.

Any refusal to issue a permit, renew a permit, suspend a permit or revoke a permit under the provisions of this section is appealable to the City Council. Any person aggrieved by said action shall file written notice of such appeal with the city clerk and pay designated fee no later than ten days after the action by the finance officer or his or her designee. Such matters shall be heard at the next regular meeting of the city council that is at least ten days after the filing of the appeal, at which time the city council shall hear and receive written and oral evidence upon all matters involved. The decision of the city council shall be final upon all parties concerned.

5.44.160 Term of permit.

Permits issued under the provisions of Section 5.44.120 shall be valid for a period of one year from the date of issuance and shall be renewable annually. The fee for the issuance and renewal of the permit shall be set by resolution.

5.44.170 Sale, transfer, or change of location.

Upon sale, transfer or relocation of a massage establishment, the massage establishment permit therefor shall be null and void; provided, however, that upon the death or incapacity of the permittee the massage establishment may continue in business for a reasonable period of time, not to exceed three months, to allow for an orderly transfer of the permit. No such permittee shall operate under any name or conduct the business under any designation or at any location not specified in the permit.

5.44.180 Massage establishment—Generally.

- A. No permit to conduct a massage establishment shall be issued until an inspection has been made by a building inspector, fire chief, health officer and chief of police of the city or their designated representative.

- B. Construction of rooms used for toilets, tubs, steam baths, and showers shall be made in accordance with the state and city building codes. Plumbing fixtures shall be installed in accordance with said codes.

- C. Toilet facilities shall be provided in convenient locations.

- D. Lavatories or wash basins provided with both hot and cold running water shall be installed in either room or the vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

- E. All portions of massage establishments shall be provided with adequate light and ventilation as approved by the health officer. When windows or skylights are used for ventilation, at least one-half of the total required window area shall be able to be opened.

- F. All electrical equipment shall be installed in accordance with the requirements of the city electrical code.

5.44.190 Massage establishment—Hours.

No person shall conduct or operate a massage establishment or service between the hours of eleven p.m. and six a.m. of the next day.

5.44.200 Outcall prohibition.

Outcall massage/bodywork shall not be performed unless authorized in writing by a physician, surgeon, chiropractor or osteopath duly licensed to practice in the State of California. Violation of this section shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.12 of this code.

5.44.210 Locations—Prohibited.

Outcall massage or on-site therapy shall not be conducted in the following locations:

- A. A hotel/motel room or any other similar location used primarily for transitory habitation purposes.
- B. The residence of the outcall or on-site massage/bodywork practitioner.
- C. A private residence, apartment, or similar living facility.
- D. Any location not otherwise specifically authorized by this chapter or by Title 20 of this code.
- E. Violation of this section shall be unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code.

5.44.220 Operating requirements.

- A. Each person providing massage or bodywork techniques at a massage establishment shall display at that establishment his or her original certificate from the State of California as a massage practitioner or massage therapist. If that person has an unexpired valid massage technician permit from the City of Merced instead of a

certificate from the State of California, then that permit shall be displayed.

B. Upon the request from a member of law enforcement, each person providing massage or bodywork techniques at a massage establishment shall provide his or her full name and certificate number from the State of California or a copy of the unexpired massage technician permit from the City of Merced as a masseur or masseuse-massage/bodywork practitioner.

C. Every portion of a massage establishment shall be kept clean and operated in a sanitary condition.

D. Each massage establishment shall be provided with clean, laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in an approved and sanitary manner. Each massage table shall be provided with clean sheets and towels prior to each use. Approved receptacles shall be provided for the storage of soiled linen and paper towels.

E. Wet and dry heat rooms, shower compartments, and toilet rooms located at a massage establishment shall be thoroughly cleaned each day the business is in operation. Bathtubs and shower compartments shall be thoroughly cleaned with a disinfectant after each use.

F. No massage establishment, whether located in any building originally constructed for residential or sleeping purposes or not, shall be used for residential or sleeping purposes.

G. Each massage establishment and its employees and independent contractors shall fully comply with the requirements of the Massage Therapy Act (California Business and Professions Code Section 4600 *et seq.*)

H. Any person operating a massage establishment shall be responsible for the activities that occur at the massage establishment, including those performed by any employee and/or independent contractor working at the massage establishment.

5.44.230 Off-premises massage/bodywork.

No person shall perform or administer massage or bodywork techniques as either on-site therapy or outcall massage/bodywork, as those terms are defined herein, for money or other consideration, without obtaining a valid certificate from the State of California as a massage practitioner or massage therapist in conjunction with a valid city of Merced business license.

5.44.240 Register and certificate numbers.

The operator of a massage establishment must maintain a register of all persons working on the premises and their state certificate numbers as either a massage practitioner or massage therapist. If an employee or individual providing massage or bodywork services on the premise has an unexpired valid massage technician permit from the City of Merced instead of a certificate from the State of California, then the permit number shall be provided upon request. Such register shall be available for inspection during regular business hours by any city police officer.

5.44.250 Persons employed under age eighteen not permitted.

It shall be unlawful for any owner, proprietor, manager or other person in charge of any massage establishment to employ any person who is not at least eighteen (18) years of age.

5.44.260 Notices.

Every permittee of a massage establishment shall post the following signs in a conspicuous place printed in bold letters not less than one (1) inch in height:

A. A statement of the rates to be charged for all massage services to be performed. No sum shall be charged for such massage services greater than that shown on the rate card;

B. A statement that the premises are subject to inspection without notice by authorized officials of the city.

5.44.270 Inspection.

The police department, building inspector and the health officer shall from time to time make an inspection of each massage establishment in the city for the purpose of determining that the provisions of this chapter are being complied with.

5.44.280 Persons without certificates not allowed.

It shall be the responsibility of the permittee for the massage establishment to ensure that each person employed has a valid certificate from the State of California as a massage practitioner or massage therapist or an unexpired massage technician permit from the City of Merced. Persons without such valid certificates or unexpired permits shall not provide massage or bodywork techniques at a massage establishment.

5.44.290 Exceptions.

A. This chapter shall not apply to hospitals, nursing homes, sanitariums, hospices, retirement or rest homes, community care facilities, and the like, or to any person

holding a valid certificate, that has not been revoked or suspended, to practice the healing arts, chiropractic, or physical therapy under the laws of the state when lawfully carrying out their particular profession, or persons working under the direction of any persons in any such establishments, nor shall this chapter apply to barbers or cosmetologists when lawfully carrying out their particular profession or business and holding a valid license or certificate of registration, that has not been revoked or suspended, issued by the State of California.

B. Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic events such as road races, track meets, triathlons, biatholons or similar single occurrence athletic or recreational events.

C. A bona fide nonprofit club or organization as defined in Section 5.44.100 or its employees shall be required to obtain a permit, and must conform to all applicable building, health, fire and zoning laws and regulations of the city. The fees for the permits may be waived by the finance officer or his or her designee.

D. On-site therapy is allowed if performed by an individual with a certificate from the State of California as a massage practitioner or massage therapist.

E. Students at an educational facility deemed by the California Massage Therapy Council to be an approved school shall be allowed to provide massage techniques and bodywork techniques at the campus or facilities at which they are receiving their education; provided, however, that such students shall not provide massage techniques or bodywork techniques at a massage establishment or as an outcall massage until they have

obtained a certificate from the State of California as a massage practitioner or massage therapist.

5.44.300 Alcoholic beverages.

No massage establishment or any employee thereof shall sell, serve, furnish, keep or possess any alcoholic beverage on the premises.

5.44.310 Violation—Penalty—Person with valid certificate or permit.

Any owner, operator, manager or permittee in charge of or in control of a massage establishment who knowingly employs any person who is not in possession of a valid, unrevoked certificate from the State of California as a massage practitioner or massage therapist or an unexpired massage technician permit from the City of Merced or who allows such a person to practice within such a place of business is guilty of a misdemeanor and upon conviction such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

5.44.320 Violation—Penalty—Generally.

Every person who violates any provisions of this chapter is guilty of a misdemeanor, and upon conviction such person shall be punished in accordance with Chapter 1.12 of this code.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining

portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 20__, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 20__, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

**APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY**

Ken Ayed *10/26/15*
City Attorney Date

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 5.44, "MASSAGE
ESTABLISHMENTS," OF THE MERCED
MUNICIPAL CODE

~~Article I.—Definitions~~

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS
FOLLOWS:

SECTION 1. AMENDMENT TO CODE. Chapter 5.44, "Massage
Establishments," of the Merced Municipal Code is hereby amended to read as
follows:

"Chapter 5.44
MASSAGE ESTABLISHMENTS

<u>Section:</u>	
<u>5.44.005</u>	<u>Title.</u>
<u>5.44.010</u>	<u>Findings and Purpose.</u>
<u>5.44.015</u>	<u>Definitions.</u>
<u>5.44.020</u>	<u>Massage or bodywork techniques.</u>
<u>5.44.030</u>	<u>Massage/bodywork establishment.</u>
<u>5.44.040</u>	<u>On-site therapy.</u>
<u>5.44.050</u>	<u>Outcall massage.</u>
<u>5.44.060</u>	<u>Masseur or masseuse—Massage/bodywork practitioner.</u>
<u>5.44.070</u>	<u>Person.</u>
<u>5.44.080</u>	<u>Health officer.</u>
<u>5.44.090</u>	<u>Bona fide nonprofit club.</u>
<u>5.44.100</u>	<u>Permit required.</u>
<u>5.44.110</u>	<u>Application fee—Operator.</u>
<u>5.44.120</u>	<u>Application fee—Massage establishment.</u>

- 5.44.130 Verification.
- 5.44.140 Referral to other departments.
- 5.44.150 Issuance, refusal, revocation or suspension of permit.
- 5.44.160 Term of permit.
- 5.44.170 Sale, transfer, or change of location.
- 5.44.180 Massage establishment—Generally.
- 5.44.190 Massage establishment—Hours.
- 5.44.200 Outcall prohibition.
- 5.44.210 Locations—Prohibited.
- 5.44.220 Operating requirements.
- 5.44.230 Off-premises massage/bodywork.
- 5.44.240 Register and certificate numbers.
- 5.44.250 Persons employed under age eighteen not permitted.
- 5.44.260 Notices.
- 5.44.270 Inspection.
- 5.44.280 Persons employed without permits not allowed.
- 5.44.290 Exceptions.
- 5.44.300 Alcoholic beverages.
- 5.44.310 Violation—Penalty—Person with valid certificate or permit.
- 5.44.320 Violation—Penalty—Generally.

5.44.005 Title.

This chapter shall be known as the City of Merced ‘Massage Establishments Ordinance’ and may be cited as such.

5.44.010 Findings and Purpose.

The City Council finds and declares as follows:

- A. The City is authorized to regulate massage establishments pursuant to Government Code Section 51030 et seq., Business and Professions Code Section

4600 et seq., Article XI, Section 7 of the California Constitution and Section 200 of the City of Merced Charter.

B. The City wishes both to recognize the practice of massage as a valid professional field and to discourage unlawful activity that otherwise may become associated with some massage establishments.

C. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Merced.

5.44.015 Definitions.

~~5.44.010 – Definitions.~~

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in ~~this article.~~ Sections 5.44.020 –to 5.44.090.

5.44.020 Massage or bodywork techniques.

~~“‘Massage or techniques’ and ‘bodywork techniques’ means’ mean~~ any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of another human body with the use of the hands, arms, or other portions of the body, or with the aid of any mechanical or electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. ~~Massage or bodywork techniques should also include the giving of any baths as listed under this section.~~

5.44.030 – Massage/bodywork establishment and massage establishment.

~~"'Massage/bodywork establishment' means' and 'massage establishment' mean~~ any establishment having a fixed place of business where any person, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, any of the ~~massage/bodywork services or~~ techniques ~~mentioned~~ and bodywork techniques described in Section 5.44.020 ~~or 5.44.060~~ for compensation. ~~Any establishment engaged in or carrying on, or permitting any combination of massage and bath house is a massage/bodywork establishment.~~

5.44.040 – On-site therapy.

~~"'On-site therapy'"~~ means any method of pressure on, or

friction against, or stroking, kneading, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations, when the client remains fully clothed and at a location other than a massage/bodywork establishment, and is limited to business offices, sports complexes, convention centers, and public events.

~~5.44.045~~ **5.44.050 Outcall massage.**

~~"'Outcall massage'"~~ means the engaging in or carrying on of massage ~~techniques or~~ bodywork techniques for a fee or consideration at a location other than at a duly licensed massage/bodywork establishment.

~~5.44.050~~ **5.44.060 Masseur or masseuse—Massage/bodywork practitioner.**

~~"Masseur or masseuse—massage/bodywork practitioner"~~
~~means~~ and ~~'massage/bodywork practitioner'~~ mean any natural person, other than a medical practitioner licensed by the ~~state~~ State of California, who practices or administers any massage/ technique or bodywork technique ~~as defined in this article~~ in exchange for a fee, income, or anything of any value whatsoever within the ~~city~~ City of Merced unless otherwise excepted.

~~5.44.060—Public bath house.~~

~~"Public bath house" means any place, including a private club or organization, except as otherwise provided, wherein any person, firm, association, corporation, or partnership engages in, conducts, or carries on, or permits to be engaged in, conducted, or carried on, or the giving or furnishing of Russian, Finnish, Swedish, hot air, vapor, electric cabinet, steam, mineral, sweat, salt, Japanese, sauna, fomentation or electric baths or baths of any kind whatever excluding ordinary tub baths or showers where an attendant is not required.~~

5.44.070 – Person.

~~"Person"~~ means any individual, copartnership, partnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

5.44.080 – Health officer.

~~"Health officer"~~ means that person designated by the ~~city~~ City of Merced as health officer or ~~his~~ the authorized representative.

~~5.44.090—Recognized school of massage.~~ **Bona fide nonprofit club.**

~~"Recognized school of massage" means any school or institution which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study not less than one hundred eighty class hours to be given in not less than three calendar months, before the student is furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which school has been approved pursuant to Section 29025 of the Education Code of the state.~~

~~5.44.100 Bona fide nonprofit club.~~

"Bona fide nonprofit club" means any fraternal, charitable, religious, benevolent, or any other nonprofit organization having a regular membership association primarily for mutual social, mental, political, and civic welfare to which admission is limited to the members and guests and revenue accruing therefrom is to be used exclusively for the benevolent purposes of said organization and which organization or agency is exempt from taxation, under the Internal Revenue Laws of the United States as a bona fide fraternal, charitable, religious, benevolent, or nonprofit organization and in which massage ~~or bath services~~ techniques are provided incidental to its primary operation.

~~Article II. Permits~~

~~5.44.110~~ 5.44.100 **Permit required.**

A. Except as provided by ~~Sections 5.44.040 and 5.44.390~~ Section 5.44.290 of this chapter, no person shall perform massage, or bodywork techniques for a fee or any other consideration at a location outside a massage establishment ~~or a school of massage~~ as defined in this chapter.

B. It is unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code for any person to engage in, conduct, or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city the operation of a massage establishment as defined in this ~~article~~chapter without first having obtained a permit from the city after approval by the requisite city officers.

C. It is unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code for any person to act as a masseur, masseuse, massage/bodywork practitioner, ~~instructor, trainee,~~ or to take any other position of employment involving the performance of massages, with a massage establishment-~~or school of massage,~~ without ~~first having obtained a permit from the city after approval by the requisite city officers.~~ having a valid and active certificate from the State of California as a massage practitioner or massage therapist. If, however, a person has a valid, unexpired massage technician permit from the City of Merced, that person may continue to perform such services at a massage establishment until such permit expires. Upon the expiration of said permit, the person shall cease all activities within the City of Merced as a massage/bodywork practitioner unless that person obtains and maintains a valid and active certificate from the State of California as a massage practitioner or massage therapist.

~~5.44.120~~ **5.44.110 Application fee—Operator.**

Every applicant for a permit to maintain, operate, or conduct a massage establishment ~~or a school of massage~~ shall file an application with the finance officer upon a form

provided and shall pay a filing fee of ~~one~~three hundred dollars (\$300.00) which shall not be refundable.

"Applicant" includes an individual owner, managing partner or corporate manager.

~~5.44.130 Application fee Employee.~~

~~Every person employed by a massage establishment, including any person who engages in the practice of massage as defined in this article, and every instructor and trainee in a school of massage shall file an application with the finance officer upon a form provided and shall pay a filing fee of twenty-five dollars which shall not be refundable.~~

~~5.44.140 Application General information.~~

5.44.120 Application—Massage establishment.

A. An application for a permit to operate a massage establishment shall set forth the exact nature of the massage to be administered and the proposed place of business and facilities therefor.

~~Applications for permits shall be submitted to the finance officer. Every~~B.

If the applicant is a natural person who does not have a valid certificate from the State of California as a massage practitioner or massage therapist, then the application shall furnish~~include~~the following information regarding that person:

~~A. The type of permit applied for;~~

~~B. 1.~~ The name and residence address including all aliases~~any other names~~ by which the applicant has been known;

~~2. C.~~ The two previous residence addresses immediately prior to the present residence address of the applicant;

~~3. D.~~ Written proof that the applicant is at least eighteen years of age;

4. ~~Business, occupation or employment of the applicant for the three years immediately preceding the date of application;~~

~~E. 5.~~ The applicant's height, weight, color of eyes and hair;

~~F. 6.~~ Two recent portrait photographs of the applicant, which photographs shall not exceed two inches square in size and shall be full front views of the face and head only;

~~G. Business, occupation or employment of the applicant for the three years immediately preceding the date of application;~~

~~H. 7.~~ The applicant's social security number and driver's license number, if any;

~~I. 8.~~ The massage or similar business license or permit history of the applicant; whether such person has previously operated in this or another city or state under license or permit; whether such person has had such license or permit revoked or suspended and the reason therefor; and the business activity or occupation subsequent to such action of suspension or revocation;

~~9. J.~~ Whether the applicant has ever been arrested for or convicted of:

~~I. i.~~ An offense involving conduct which required registration as a sex offender pursuant to ~~Section 290 of the~~ Penal Code, Section 290.

~~2.~~ ii. An offense involving the use of force and violence upon the person of another that amounts to a felony,

iii. ~~3.~~ An offense involving sexual misconduct with children,

~~4.~~ iv. An offense as defined in California Penal Code Sections ~~311, 315, 316, 318,~~ 220, 261, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266j, 311, 314, 315, 316, 318, 647 subdivision (a), 647 subdivision (b), or 647 subdivision (d), ~~647a, or any violation of Penal Code Section 182,~~

~~5.~~ v. Conspiracy to violate any of the aforesaid sections of the California Penal Code, or

vi. ~~6.~~ The commission of the equivalent of any of the aforesaid crimes in a jurisdiction outside the state of California;

10. ~~k.~~ Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement must be made giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution;

~~l.~~ ~~The location at which the permittee is to be employed;~~

~~m.~~ 11. Such other identification and information necessary to discover the truth of matters specified

in this section as required to be set forth in the application:

~~5.44.150 Application — Masseuse, masseur or instructor.~~

- ~~A. An applicant for a permit as a masseur, masseuse, or instructor must furnish a diploma or certificate of graduation from a recognized school of massage where in the method, profession, and work of massage is taught.~~
- ~~B. The finance officer shall accept as meeting the training requirements of this article satisfactory evidence that the applicant has attended not less than one hundred eighty hours of instruction in not less than three months at a recognized school within or without this state or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this chapter.~~
- ~~C. Two years' bona fide experience as a masseur or masseuse in a massage establishment attested to in writing by a person other than the applicant may be substituted for the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught.~~

~~5.44.160 Application — Massage establishment.~~

- ~~A. An application for a permit to operate a massage establishment shall set forth the exact nature of the massage or baths to be administered and the proposed place of business and facilities therefor.~~

12. The application shall be referred to the chief of police or his or her designee who shall have the right to confirm the identity of the applicant by taking fingerprints and additional photographs and shall have the right to confirm the criminal record of the applicant.

BC. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown on its articles of incorporation together with the names and addresses of each of the officers, directors, and each stockholder holding more than ten percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the names and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply. The information specified in subsection (B) shall be provided for each officer, director, stockholder owning ten percent or more of the stock and/or partner who does not currently have a valid

certificate from the State of California as a massage practitioner or massage therapist.

~~5.44.170—Application—Health certificate.~~

~~Every application filed by a natural person shall be accompanied by a certificate from a physician licensed to practice medicine in the state that the applicant has been tested within the previous thirty days in a manner to be approved by the health officer and has been found to be free of all contagious, infectious and communicable disease.~~

~~5.44.180—School of massage.~~

~~Every application for a school of massage shall be accompanied by:~~

- ~~A. Proof of approval pursuant to Section 29025 of the education code of the state;~~
- ~~B. A statement of the educational and experience qualifications and the names and residence addresses of all directors, administrators and instructors;~~
- ~~C. A copy of the course outline, schedule of tuition fee and other charges, regulations pertaining to tardiness and absence, grading policy, and rules of operation and conduct.~~

D. If the massage establishment is proposed to be located at a location that is not owned or leased by the applicant, then the application shall state the name of the person that owns property and, if not the same as the property owner, the name of the person that is leasing or will be leasing the property to the applicant.

~~5.44.190—~~**5.44.130 Verification.**

Every application for a permit under this article shall be verified by affidavit or by declaration, or certification under penalty of perjury ~~as provided in the California Code of Civil Procedure.~~

~~5.44.200—Referral to chief of police.~~

~~The application shall be referred to the chief of police who shall take the fingerprints and confirm the height and weight of the applicant. Nothing contained in this article shall be construed to deny the right of the chief of police to require additional photographs, information or identification of the applicant.~~

~~5.44.210—~~**5.44.140 Referral to other departments.**

A. Copies of an application for a massage establishment ~~or school of massage~~ permit shall be referred to the building ~~inspection superintendent~~official, the fire chief, the health officer, the planning ~~director~~manager and the chief of police, ~~who~~. These persons or their designated representative shall inspect the premises proposed to be operated as a massage establishment and shall make written recommendations to the finance officer concerning compliance with the codes that they administer.

~~B. All other applications shall be referred to the health officer and the chief of police for their approval or written recommendations.~~

~~5.44.220 – Trainee permit.~~

~~A. The finance officer shall issue a massage trainee permit to any person who qualifies for such a permit who files an application under Section 5.44.140 and who is currently registered and attending a recognized school of massage in the city of Merced, except that the finance officer may refuse, revoke or suspend a permit for the reasons set forth in Section 5.44.230. No trainee shall perform any of the services enumerated in Sections 5.44.020, 5.44.040, or 5.44.060, except that such trainee may engage in massage services within the school premises under the direction of a qualified instructor and in his presence.~~

~~B. Such trainee permit shall be valid for a period of three months and shall not be renewed or extended except for a delay of requisite training due to accident, illness or other valid reason.~~

~~C. The applicant for a trainee permit must submit a letter signed by the owner, manager or director of the recognized school showing that the applicant is currently accepted for or enrolled in a course of study leading to a degree or certificate of graduation.~~

~~D. The trainee permit may be extended by the finance officer for a period of three months or until the trainee has completed at least one hundred eighty hours of instruction in a recognized school of massage upon a showing of good cause by the trainee contained in a written application to the finance officer.~~

~~5.44.230 –~~

5.44.150 Issuance, refusal, revocation or suspension of permit.

The finance officer or his or her designee shall issue ~~all other permits~~or renew the massage establishment permit after the application has been reviewed and approved,

except that for good cause the finance officer may refuse, revoke or suspend a permit for a massage establishment, ~~a school of massage or for any other applicant or permittee for any of the following reasons~~ with the grounds for action to be set forth in writing and delivered to the applicant or permittee:

A. That the operation as proposed by the applicant if permitted will not or does not comply with all applicable laws including, but not limited to, ordinances relating to building, health, planning, housing, zoning and fire protection, and other applicable codes which the city has a responsibility to administer including the regulations ~~adapted~~ adopted by the health officer;

B. That the applicant or any other person who will be directly engaged in the management and operation of a massage establishment ~~or school of massage~~ has been arrested or convicted of any of the offenses enumerated ~~in~~ subsection 5.44.140 (J) 5.44.120(B)(9) or convicted of an offense ~~outside the state that would have constituted any of the described~~ in another jurisdiction that is equivalent to the statutorily defined elements of the offenses ~~if committed within the state;~~ listed in Section 5.44.120(b)(9);

C. A permit may be issued to any person arrested or convicted of any of the crimes described if such arrest or conviction occurred more than seven years prior to the date of the application and the applicant has had no subsequent felony arrests or convictions of any nature and no subsequent misdemeanor arrests or convictions for crimes mentioned in subsection ~~5.44.140(J);~~ 5.44.120(B)(9);

D. That the applicant has been licensed or registered in any state as a prostitute;

~~E. That the character of the neighborhood or district is not a proper or suitable place in which to conduct or maintain such business or calling;~~

~~F. In any case where any of the provisions of this chapter are violated or where the permittee or any employee including a masseur, or a masseuse, ~~instructor, or trainee~~ is engaged in any conduct at a massage establishment ~~or school of massage~~ which violates any federal, state or local law or ordinances, ~~or;~~~~

E. In any case where the permittee of a massage establishment ~~or school of massage~~ has actual or constructive knowledge of ~~such violations, or where any such permittee by the exercise of due diligence should have had actual or constructive knowledge of any such violation, or in~~ any violation of any state or local law or ordinances at the massage establishment;

G. In any case where such permittee or any other person ~~whatever~~ acting on ~~his~~ the permittee's behalf refuses to allow any duly authorized building inspector, police officer, ~~or fire inspector,~~ health officer ~~of the city,~~ or their designated representative to inspect the premises or the operations therein; to ensure compliance with the provisions of this chapter and the Merced Municipal Code; or

~~GH.~~ Upon the recommendation of the ~~Merced County~~ health officer that such business is being managed, conducted, or maintained without regard for the public health, or for the health of patrons or customers, or without due regard to proper sanitation or hygiene.

Any refusal to issue a permit, ~~suspension or revocation~~ renew a permit, suspend a permit or revoke a permit under the provisions of this section is appealable to the ~~city council as provided by law.~~ City Council. Any person aggrieved by said action shall file written notice of such appeal with the city clerk and pay designated fee no later than ten days after the action by the finance officer or his or her designee. Such matters shall be heard at the next regular meeting of the city council that is at least ten days after the filing of the appeal, at which time the city council shall hear and receive written and oral evidence upon all matters involved. The decision of the city council shall be final upon all parties concerned.

~~5.44.240—Specific permit issued.~~

~~The permit when issued shall state whether it is for a massage establishment, for a school of massage, for a masseur or masseuse, for a massage establishment employee who is not authorized to perform a massage, or for an instructor or trainee in a school of massage.~~

~~5.44.250—~~ 5.44.160 **Term of permit.**

~~A.~~ Permits issued under the provisions of Section ~~15.212~~ 5.44.120 shall be valid for a period of one year from the date of issuance and shall be renewable annually. The fee for the issuance and renewal of the permit shall be set by resolution.

- ~~B.~~ ~~Application for the renewal of a masseur or masseuse permit shall be accompanied by a nonrefundable ten-dollar filing fee, and shall contain the same information as in Section 5.44.140, excluding therefrom subsections (D), (G), (H), and (I).~~
- ~~C.~~ ~~The application shall be referred to the chief of police who shall have the right to confirm the identity of the applicant by taking fingerprints and additional photographs and shall have the right to confirm the height and weight and criminal record of the applicant.~~
- ~~D.~~ ~~The application of a natural person shall be accompanied by a certificate from a physician licensed to practice medicine in the state that the applicant has been tested within the previous thirty days in a manner to be approved by the health officer and has been found to be free of all contagious, infectious and communicable disease.~~

~~5.44.260~~ **5.44.170** Sale, transfer, or change of location.

Upon sale, transfer or relocation of a massage establishment ~~or school of~~ the massage ~~the~~ establishment permit therefor shall be null and void; provided, however, that upon the death or incapacity of the permittee the massage establishment may continue in business for a reasonable period of time, not to exceed three months, to allow for an orderly transfer of the permit. No such permittee shall operate under any name or conduct ~~his~~ the business under any designation or at any location not specified in the permit. ~~Any masseur, masseuse, instructor, trainee, or other employee may continue to use a valid and unexpired permit at any other massage establishment or school of massage as authorized upon written notice to the city.~~

~~Article III. Requirements and Restrictions~~

~~5.44.270~~ **5.44.180** Massage establishment—Generally.

A. No permit to conduct a massage establishment shall be issued until an inspection has been made by a building inspector, fire chief, health officer, and chief of police of the city or their designated representative.

B. Construction of rooms used for toilets, tubs, steam baths, and showers shall be made in accordance with the state and city building codes. Plumbing fixtures shall be installed in accordance with said codes.

C. Toilet facilities shall be provided in convenient locations. ~~Separate toilet facilities shall be provided for male and female and shall be designated as to the sex accommodated therein.~~

D. Lavatories or wash basins provided with both hot and cold running water shall be installed in either room or the vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

E. All portions of massage establishments ~~and baths~~ shall be provided with adequate light and ventilation as approved by the ~~public~~ health officer. When windows or

skylights are used for ventilation, at least one ~~half~~ of the

total required window area shall be ~~openable~~ able to be opened.

- ~~F. To allow for adequate ventilation, cubicles, rooms and areas provided for patrons' use not served directly by a required window, skylight, or mechanical system of ventilation shall be constructed so that the height of partitions does not exceed seventy-five percent of the floor-to-ceiling height of the area in which they are located.~~
- ~~G. No cubicle, room, booth or any area within a massage establishment which is used for giving massages shall be fitted with a door capable of being locked.~~

~~H~~E. All electrical equipment shall be installed in accordance with the requirements of the city electrical code.

~~5.44.280~~ 5.44.190 **Massage establishment—Hours.**

No person shall conduct or operate a massage establishment or service between the hours of ~~two a~~eleven p.m. and six a.m. of the ~~same~~next day.

~~5.44.285~~ **5.44.200 Outcall prohibition.**

Outcall massage/bodywork shall not be performed unless authorized in writing by a physician, surgeon, chiropractor, or osteopath duly licensed to practice in the ~~state~~State of California. Violation of this section shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.12 of this code.

~~5.44.290—School of massage—~~

- ~~A. A school of massage shall have the same facilities as required of a massage establishment.~~
- ~~B. A school of massage permit shall not be issued for the same location as a massage establishment.~~

~~5.44.295~~ **5.44.210 Locations—Prohibited.**

Outcall massage or on-~~s~~ite therapy shall not be conducted in the following locations:

- A. A hotel/motel room or any other similar location used primarily for transitory habitation purposes.

B. The residence of the outcall or on-site
massage/bodywork practitioner.

C. A private residence, apartment, or similar living
facility.

D. Any location not otherwise specifically authorized
by this chapter or by Title 20 of this code.

E. Violation of this section shall be unlawful and a
misdemeanor subject to punishment in accordance with
Chapter 1.12 of this code.

~~5.44.300~~ **5.44.220** **Operating requirements.**

A. Each person providing massage or bodywork techniques at a massage establishment shall display at that establishment his or her original certificate from the State of California as a massage practitioner or massage therapist. If that person has an unexpired valid massage technician permit from the City of Merced instead of a certificate from the State of California, then that permit shall be displayed.

B. Upon the request from a member of law enforcement, each person providing massage or bodywork techniques at a massage establishment shall provide his or her full name and certificate number from the State of California or a copy of the unexpired massage technician permit from the City of Merced as a masseur or masseuse-massage/bodywork practitioner.

C. Every portion of a massage establishment ~~or school of massage including appliances, apparatus, and personnel~~ shall be kept clean and operated in a sanitary condition.

~~B. All masseurs, masseuses, instructors and trainees shall be clean and wear clean outer garments, the use of which is restricted to the massage establishment. A separate dressing room for each sex must be maintained on the premises with individual lockers for each employee or trainee. Doors to such dressing rooms shall be open inward and shall be self-closing.~~

D. Each massage establishment ~~and school of massage~~ shall be provided with clean, laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in an approved and sanitary manner. Each massage table shall be provided with clean sheets and towels prior to each use. ~~No towels or sheets shall be laundered or dried in any massage establishment.~~ Approved receptacles shall be provided for the storage of soiled linen and paper towels.

E. Wet and dry heat rooms, shower compartments, and toilet rooms located at a massage establishment shall be thoroughly cleaned each day the business is in operation. Bathtubs and shower compartments shall be thoroughly cleaned with a disinfectant after each use.

F. No massage establishment ~~or school of massage~~, whether located in any building originally constructed for residential or sleeping purposes or not, shall be used for residential or sleeping purposes.

G. Each massage establishment and its employees and independent contractors shall fully comply with the requirements of the Massage Therapy Act (California Business and Professions Code Section 4600 et seq.)

H. Any person operating a massage establishment shall be responsible for the activities that occur at the massage establishment, including those performed by any employee and/or independent contractor working at the massage establishment.

~~5.44.305~~ **5.44.230 Off-premises massage/bodywork.**

No person shall perform or administer massage or

bodywork techniques as either on-site therapy or outcall

massage/bodywork, as those terms are defined herein, for money or other consideration, without obtaining a valid certificate from the State of California as a massage/bodywork practitioner ~~license pursuant to the provisions of this chapter~~ or massage therapist in conjunction with a valid city of Merced business license.

~~5.44.310~~ **5.44.240 Register and ~~permit number of employees.~~ certificate numbers.**

A. The operator of a massage establishment must maintain a register of all persons ~~employed~~ working on the premises and their ~~permit numbers~~ state certificate numbers

as either a massage practitioner or massage therapist. If an employee or individual providing massage or bodywork services on the premise has an unexpired valid massage technician permit from the City of Merced instead of a certificate from the State of California, then the permit number shall be provided upon request. Such register shall be available for inspection during regular business hours by any city police officer ~~or county health officer.~~

- ~~B. The operator of a school of massage must maintain a register of all persons employed on the premises and of all trainees or students. Such register shall be available for inspection during regular business hours by any city police officer or county health officer.~~

~~5.44.320 Identification cards.~~

- ~~A. The finance officer shall provide each masseur, masseuse, instructor or trainee, or other employee granted a permit with an identification name plate which shall contain a photograph of and the first name and permit number of said masseur, masseuse, instructor or trainee which must be worn on the front of the outermost garment at all times during the hours of employment or training.~~
- ~~B. Every permit which shall have been granted pursuant to the provisions of this chapter to a massage establishment or school of massage shall be displayed in a conspicuous place so that the name may be readily seen by persons entering the premises.~~

~~5.44.330~~ **5.44.250** **Persons employed under age eighteen not permitted.**

It shall be unlawful for any owner, proprietor, manager or other person in charge of any massage establishment ~~or school of massage~~ to employ any person who is not at least eighteen (18) years of age.

~~5.44.340 Daily register.~~

~~Every permittee of a massage establishment or school of massage shall keep a daily register, approved as to form by the police department, of all patrons or customers with names, addresses and hours of arrival and the rooms or cubicles assigned, if any, or of location of any massage given under the direction of a practitioner of the healing arts, chiropractic or physical therapy and with the name of the employee providing any such massage services. The daily register shall at all times during business hours be subject to inspection by a health officer or a police officer and shall be kept on file for one (1) year.~~

~~5.44.350~~ **5.44.260** **Notices.**

Every permittee of a massage establishment ~~or school of massage~~ shall post the following signs in a conspicuous place printed in bold letters not less than one (1) inch in height:

~~A.~~ A. A statement of the rates to be charged for all massage services to be performed. No sum shall be charged for such massage services greater than that shown on the rate card;

B. A statement that the premises are subject to inspection without notice by authorized officials of the city.

~~5.44.360~~ 5.44.270 **Inspection.**

The police department, building ~~inspection~~ inspector and the health ~~department~~ officer shall from time to time, ~~but not less than twice a year,~~ make an inspection of each massage establishment in the city for the purpose of determining that the provisions of this chapter are being complied with.

~~5.44.370~~ 5.44.280 **Persons ~~employed without permits~~ certificates not allowed.**

It shall be the responsibility of the permittee for the massage establishment ~~or school of massage to insure~~ to ensure that each person employed ~~shall first have obtained a valid permit pursuant to this chapter.~~ has a valid certificate from the State of

~~5.44.380~~ **Time limit for filing application.**

~~All persons who possess an outstanding business license heretofore issued for the operation of a massage establishment or school of massage and all employees thereof must file for a permit on or before December 31, 1975, if they qualify under the provisions contained in this chapter. Failure to do so and continued operation of said place of business or continued employment without a permit shall constitute a violation of all applicable provisions of this chapter.~~

California as a massage practitioner or massage therapist or an unexpired massage technician permit from the City of Merced. Persons without such valid certificates or unexpired permits shall not provide massage or bodywork techniques at a massage establishment.

5.44.290 ~~5.44.390~~—Exceptions.

A. This chapter shall not apply to hospitals, nursing homes, sanitariums, hospices, retirement or rest homes, community care facilities, and the like, or to any person holding a valid certificate, that has not been revoked or suspended, to practice the healing arts, chiropractic, or physical therapy under the laws of the state when lawfully carrying out their particular profession, or persons working under the direction of any persons in any such establishments, nor shall this chapter apply to barbers or cosmetologists when lawfully carrying out their particular profession or business and holding a valid license or certificate of registration, that has not been revoked or suspended, issued by the State of California.

~~B. This chapter shall not apply to any massage therapist, massage practitioner, bodywork therapist, massage and bodywork therapist, bodyworker, bodywork practitioner, or massage and bodywork practitioner who holds a valid certificate issued by the massage therapy organization created pursuant to California Business and Professions Code Section 4600 et seq. and who is practicing consistent with the qualifications established by that certificate.~~ Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic events such as road races, track meets, triathlons, biatholons or similar single occurrence athletic or recreational events.

~~C. This chapter shall not apply to massage establishments or businesses, as those terms are defined in California Business and Professions Code Section 4612, subd. (b)(1), except that such establishments or businesses shall not be exempt from this chapter to the extent Section 4612 expressly permits the regulation of such businesses or establishments by a city.~~

~~D.C.~~ A bona fide nonprofit club or organization as defined in Section 5.44.100 or its employees shall be required to obtain a permit, and must conform to all applicable building, health, fire, and zoning laws and regulations of the city. The fees for the permits may be waived by the finance officer or his or her designee.

D. On-site therapy is allowed if performed by an individual with a certificate from the State of California as a massage practitioner or massage therapist.

E. Students at an educational facility deemed by the California Massage Therapy Council to be an approved school shall be allowed to provide massage techniques and bodywork techniques at the campus or facilities at which they are receiving their education; provided, however, that such students shall not provide massage techniques or bodywork techniques at a massage establishment or as an outcall massage until they have obtained a certificate from the State of California as a massage practitioner or massage therapist.

~~5.44.400~~ 5.44.300 **Alcoholic beverages.**

No massage establishment, ~~school of massage~~ or any employee ~~or trainee~~ thereof shall sell, serve, furnish, keep or possess any alcoholic beverage on the premises.

~~5.44.410~~ 5.44.310 **Violation—Penalty—~~Permitless employees.~~ Person with valid certificate or permit.**

Any owner, operator, manager, or permittee in charge of or in control of a massage establishment ~~or school of~~ ~~massage~~ who knowingly employs any person who is not in possession of a valid, unrevoked ~~permit~~ certificate from the State of California as a massage practitioner or massage therapist or an unexpired massage technician permit from the City of Merced or who allows such a person to practice within such a place of business is guilty of a misdemeanor and upon conviction such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

~~5.44.420~~ **5.44.320** **Violation—Penalty—Generally.**

Every person who violates any provisions of this chapter is guilty of a misdemeanor, and upon conviction such person shall be punished in accordance with Chapter 1.12 of this code. ”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the _____ day of _____, 20____, and was passed and adopted at a regular meeting of said City Council held on the _____ day of _____, 20____, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

Document comparison by Workshare Compare on Friday, November 20, 2015
9:31:56 AM

Input:	
Document 1 ID	file://X:\Ordinances\2015\City Attorney\Baseline Massage Regulations (existing code).docx
Description	Baseline Massage Regulations (existing code)
Document 2 ID	file://X:\Ordinances\2015\City Attorney\Massage Establishments - 10-13-15.docx
Description	Massage Establishments - 10-13-15
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	254
Deletions	251
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	517

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING SECTIONS 20.20.020, "PERMITTED
USES," 20.20.040, "CONDITIONAL USES,"
20.22.020, "PERMITTED USES," 20.22.050,
"CONDITIONAL USES," 20.24.020, "PERMITTED
USES," 20.24.040, "CONDITIONAL USES,"
20.26.040, "CONDITIONAL USES," AND 20.28.040,
"CONDITIONAL USES," OF THE MERCED
MUNICIPAL CODE REGARDING THE ZONING
OF MASSAGE ESTABLISHMENTS AS
CONDITIONAL USES SUBJECT TO SPECIFIC
CONDITIONS**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Section 20.20.020,
"Permitted Uses," of the Merced Municipal Code is hereby amended to read as
follows:

"20.20.020 Permitted Uses.

The following are the principal permitted uses:

- A. Medical and dental offices and clinics;
- B. Administrative, executive and editorial offices;
- C. Professional offices for lawyers, engineers, architects;
- D. Financial offices, including banks and real estate and other general business offices;
- E. Medical and dental laboratories, not including the manufacture of pharmaceutical or other products for general sale or distribution;

- F. Commercial parking lots for passenger vehicles;
- G. Schools and studios for arts and crafts, photography, music and dance;
- H. Therapeutic/rehabilitation offices;
- I. Any other office or professional use which is determined by the commission to be of the same general character as the above permitted uses.
- J. Massage therapy provided by a sole practitioner who has a valid certificate from the State California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 *et seq.*.)”

SECTION 2. AMENDMENT TO CODE. Section 20.20.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.20.040 Conditional Uses.

The following are conditional uses:

- A. Public and quasi-public uses appropriate to the district, such as hospitals, convalescent or nursing homes and professional, business and technical schools;
- B. Mortuaries and crematories;
- C. R-4 district residential uses subject to all restrictions and requirements of that district;
- D. Public utility uses, substation, and communication equipment buildings;

- E. Signs for single occupant in excess of the allowable area, but not to exceed fifty (50) square feet per lot;
- F. Prescription pharmacies, without variety goods;
- G. Bail bond businesses;
- H. Day care facilities for more than twelve children;
- I. Day care facilities for the elderly of twelve or fewer persons.
- J. Beauty salons, barber shops, tanning salons, and nail salons.
- K. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 3. AMENDMENT TO CODE. Section 20.22.020, “Permitted Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.22.020 Permitted Uses.

The following principal permitted uses are:

- A. Any local retail business or service establishment, such as but not limited to a grocery store, bake shop, drug store, barber and beauty shop, clothes cleaning and laundry pickup station, business or professional office, financial institutions, supplying commodities or performing services for residents of the neighborhood;
- B. Restaurant, cafe, and soda fountain, not including entertainment or dancing, or sale of liquor, beer and other

alcoholic beverages by the glass, or for consumption on the premises;

C. Commercial parking lots for passenger vehicles;

D. Any other retail business or service establishment which is determined by the commission to be of the same general character as the above permitted retail business or service uses.

E. Beauty salons, barber shops, tanning salons, and nail salons.

F. Massage therapy provided by a sole practitioner who has a valid certificate from the State of California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 *et seq.*)”

SECTION 4. AMENDMENT TO CODE. Section 20.22.050, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.22.050 Conditional Uses.

The conditional uses are:

A. Public and quasi-public uses appropriate to the C-N district;

B. Auto service station;

C. Sidewalk cafe;

D. Social hall, lodge, fraternal organizations and clubs;

E. Public utility uses, substations, and communication equipment buildings;

- F. Time and Temperature Signs. These signs are exempt from the provisions of Section 20.22.040, and only the words "time" and "temperature," or an abbreviation thereof, and the electrically controlled figures indicating the time and temperature shall be permitted thereon, and the area of the sign shall not exceed twenty-four (24) square feet per face;
- G. Drive-in restaurant;
- H. Residential uses appropriate to R-1, R-2, R-3, or R-4 districts, subject to all restrictions and requirements of the residential zone that coincides with the density permitted;
- I. Theater;
- J. Restaurant or cafe, which includes the sale of liquor, beer, or other alcoholic beverages by the glass, or for consumption on the premises;
- K. Carwash;
- L. Convenience market with gasoline sales;
- M. Fast-food restaurants;
- N. Supermarket, super grocery store;
- O. Church;
- P. Shopping center;
- Q. Day care facilities for more than twelve (12) children;
- R. Day care facilities for the elderly of twelve (12) or fewer persons;

S. Retail business of twenty thousand (20,000) square feet or less selling alcoholic beverages for off-site consumption;

T. Tattoo parlors.

U. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 5. AMENDMENT TO CODE. Section 20.24.020, “Permitted Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.24.020 Permitted Uses.

The following are principal permitted uses:

A. Stores, shops and offices supplying commodities or performing services for residents of the city as a whole or the surrounding community, such as but not limited to department stores, specialty shops, banks and other financial institutions, barber or beauty shops, personal service enterprises, antique shops, upholstery shops, artist's supply stores, medical and professional offices, and including a regional shopping center or major element of the center;

B. New automobile sales and service within an enclosed building;

C. Restaurants, theaters, and similar enterprises;

D. Business and technical schools, and schools and studios for photography, arts and crafts, music and dance;

- E. Garages, including those having facilities for automobile storage, and minor repairs as defined in this section, and commercial parking lots;
- F. Hotels and motels;
- G. Social halls, lodges, fraternal organizations and clubs;
- H. Billiard parlors or pool halls with five (5) or fewer tables and video arcades (no alcohol);
- I. Any other retail business or service establishment determined by the planning commission to be consistent with the purpose of this section and which will not impair the present or potential use of adjacent properties;
- J. Beauty salons, barber shops, tanning salons, and nail salons;
- K. Bakery;
- L. Fast-food restaurants.
- M. Massage therapy provided by a sole practitioner who has a valid certificate from the State California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 *et seq.*).

SECTION 6. AMENDMENT TO CODE. Section 20.24.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.24.040 Conditional Uses.

The following are conditional uses:

- A. Public and quasi-public uses appropriate to the C-C district;

- B. Creamery, laundry, cleaning, and dyeing establishment employing less than ten (10) persons on the premises;
- C. Used car sales;
- D. Night club, bowling alley, dance hall, roller skating rink;
- E. Automobile service station;
- F. Sidewalk cafe;
- G. Printing and publishing or lithographic shop;
- H. R-4 district residential uses, subject to all restrictions and requirements of that district;
- I. Public utility uses, substations, and communication equipment buildings;
- J. Refrigerated locker plants;
- K. Mortuary;
- L. Heating and air-conditioning sales and services;
- M. Taverns, cocktail lounges, and cardrooms;
- N. Public transportation terminals;
- O. Commercial baking plant;
- P. Commercial laundry plant;
- Q. Drive-in restaurant, drive-through restaurant;
- R. Billiard parlor or pool hall with six (6) or more tables;

- S. Day care facilities for more than twelve (12) children;
- T. Day care facilities for the elderly of twelve (12) or fewer persons;
- U. Retail business of twenty thousand (20,000) square feet or less selling alcoholic beverages for off-site consumption;
- V. Tattoo parlors;
- W. Hookah bars.
- X. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 7. AMENDMENT TO CODE. Section 20.26.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.26.040 Conditional Uses.

The conditional uses are:

- A. Public and quasi-public uses appropriate to the C-T district;
- B. Drive-in theaters;
- C. Cemeteries, mortuaries, crematoria, columbaria;
- D. Animal hospitals, veterinary clinics, and kennels;
- E. Social hall, lodge, fraternal organizations and clubs;

- F. Heliports;
- G. Signs aver two hundred square feet when adjacent to or across the street from an R district, but not to exceed five hundred square feet of total sign area per lot. Shopping centers located on a lot of 10 acres or larger and having at least two street frontages may be allowed additional sign area over 500 square feet, but not more than one freestanding sign per street frontage;
- H. Other retail, wholesale, or heavy commercial uses listed as principal permitted uses in the C-C or C-G districts and not listed in the CT district, appropriate in or necessary to serve a thoroughfare commercial area, but not including residential uses or institutions for human care;
- I. Taverns, cocktail lounges and cardrooms;
- J. Concrete mixing and asphalt mixing yards;
- K. Outdoor secondhand merchandise sales;
- L. Carwash;
- M. Day care facilities for the elderly of twelve or fewer persons.
- N. Retail business of 20,000 square feet or less selling alcoholic beverages for off-site consumption.
- O. Beauty salons, barber shop, tattoo parlors, tanning salons, and nail salons.
- P. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 8. AMENDMENT TO CODE. Section 20.28.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.28.040 Conditional Uses.

The conditional uses are:

- A. Public or quasi-public uses appropriate to the C-G district;
- B. Salvage and wrecking operations;
- C. Commercial recreation facilities, including but not limited to drive-in theaters and bowling alleys;
- D. Concrete mixing and asphalt mixing yards;
- E. Other retail commercial uses, listed as principal permitted uses in the C-T or C-C district, and not listed as permitted uses in the CG district, appropriate in or necessary to serve a general commercial area, but not including residential uses or institutions for human care;
- F. Heliports;
- G. Taverns, cocktail lounges and cardrooms;
- H. Carwash;
- I. Drive-in restaurant, drive-through restaurant;
- J. Fast-food restaurant;
- K. Garment manufacturing facilities;
- L. Pregnancy counseling and testing clinic;
- M. Day care facilities for the elderly of twelve or fewer persons.

N. Retail business of 20,000 square feet or less selling alcoholic beverages for off-site consumption.

O. Beauty salons, barber shops, tattoo parlors, tanning salons, and nail salons.

P. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 10. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

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The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2015, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2015, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

Ran Hom

City Attorney **Date** *12/24/15*

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.20.020, "PERMITTED USES," 20.20.040, "CONDITIONAL USES," 20.22.020, "PERMITTED USES," 20.22.050, "CONDITIONAL USES," 20.24.020, "PERMITTED USES," 20.24.040, "CONDITIONAL USES," 20.26.040, "CONDITIONAL USES," AND 20.28.040, "CONDITIONAL USES," OF THE MERCED MUNICIPAL CODE REGARDING THE ZONING OF MASSAGE ESTABLISHMENTS AS CONDITIONAL USES SUBJECT TO SPECIFIC CONDITIONS

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO CODE. Section 20.20.020, "Permitted Uses," of the Merced Municipal Code is hereby amended to read as follows:

"20.20.020 Permitted Uses.

The following are the principal permitted uses:

- A. Medical and dental offices and clinics;
- B. Administrative, executive and editorial offices;
- C. Professional offices for lawyers, engineers, architects;
- D. Financial offices, including banks and real estate and other general business offices;
- E. Medical and dental laboratories, not including the manufacture of pharmaceutical or other products for general sale or distribution;

- F. Commercial parking lots for passenger vehicles;
- G. Schools and studios for arts and crafts, photography, music and dance;
- H. Therapeutic/rehabilitation offices;
- I. Any other office or professional use which is determined by the commission to be of the same general character as the above permitted uses.
- J. ~~Licensed massage establishments.~~ Massage therapy provided by a sole practitioner who has a valid certificate from the State California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 *et seq.*.)”

SECTION 2. AMENDMENT TO CODE. Section 20.20.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.20.040 Conditional Uses.

The following are conditional uses:

- A. Public and quasi-public uses appropriate to the district, such as hospitals, convalescent or nursing homes and professional, business and technical schools;
- B. Mortuaries and crematories;
- C. R-4 district residential uses subject to all restrictions and requirements of that district;
- D. Public utility uses, substation, and communication equipment buildings;

- E. Signs for single occupant in excess of the allowable area, but not to exceed fifty (50) square feet per lot;
- F. Prescription pharmacies, without variety goods;
- G. Bail bond businesses;
- H. Day care facilities for more than twelve children;
- I. Day care facilities for the elderly of twelve or fewer persons.
- J. Beauty salons, barber shops, tanning salons, and nail salons.
- K. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 3. AMENDMENT TO CODE. Section 20.22.020, “Permitted Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.22.020 Permitted Uses.

The following principal permitted uses are:

- A. Any local retail business or service establishment, such as but not limited to a grocery store, bake shop, drug store, barber and beauty shop, clothes cleaning and laundry pickup station, business or professional office, financial institutions, supplying commodities or performing services for residents of the neighborhood;
- B. Restaurant, cafe, and soda fountain, not including entertainment or dancing, or sale of liquor, beer and other

alcoholic beverages by the glass, or for consumption on the premises;

C. Commercial parking lots for passenger vehicles;

D. Any other retail business or service establishment which is determined by the commission to be of the same general character as the above permitted retail business or service uses.

E. Beauty salons, barber shops, ~~licensed massage establishments~~, tanning salons, and nail salons.

F. ~~Massage therapy provided by a sole practitioner who has a valid certificate from the State California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 et seq.).~~

SECTION 4. AMENDMENT TO CODE. Section 20.22.050, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.22.050 Conditional Uses.

The conditional uses are:

A. Public and quasi-public uses appropriate to the C-N district;

B. Auto service station;

C. Sidewalk cafe;

D. Social hall, lodge, fraternal organizations and clubs;

E. Public utility uses, substations, and communication equipment buildings;

- F. Time and Temperature Signs. These signs are exempt from the provisions of Section 20.22.040, and only the words "time" and "temperature," or an abbreviation thereof, and the electrically controlled figures indicating the time and temperature shall be permitted thereon, and the area of the sign shall not exceed twenty-four (24) square feet per face;
- G. Drive-in restaurant;
- H. Residential uses appropriate to R-1, R-2, R-3, or R-4 districts, subject to all restrictions and requirements of the residential zone that coincides with the density permitted;
- I. Theater;
- J. Restaurant or cafe, which includes the sale of liquor, beer, or other alcoholic beverages by the glass, or for consumption on the premises;
- K. Carwash;
- L. Convenience market with gasoline sales;
- M. Fast-food restaurants;
- N. Supermarket, super grocery store;
- O. Church;
- P. Shopping center;
- Q. Day care facilities for more than twelve (12) children;
- R. Day care facilities for the elderly of twelve (12) or fewer persons;

S. Retail business of twenty thousand (20,000) square feet or less selling alcoholic beverages for off-site consumption;

T. Tattoo parlors.

U. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 5. AMENDMENT TO CODE. Section 20.24.020, “Permitted Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.24.020 Permitted Uses.

The following are principal permitted uses:

A. Stores, shops and offices supplying commodities or performing services for residents of the city as a whole or the surrounding community, such as but not limited to department stores, specialty shops, banks and other financial institutions, barber or beauty shops, personal service enterprises, antique shops, upholstery shops, artist's supply stores, medical and professional offices, and including a regional shopping center or major element of the center;

B. New automobile sales and service within an enclosed building;

C. Restaurants, theaters, and similar enterprises;

D. Business and technical schools, and schools and studios for photography, arts and crafts, music and dance;

- E. Garages, including those having facilities for automobile storage, and minor repairs as defined in this section, and commercial parking lots;
- F. Hotels and motels;
- G. Social halls, lodges, fraternal organizations and clubs;
- H. Billiard parlors or pool halls with five (5) or fewer tables and video arcades (no alcohol);
- I. Any other retail business or service establishment determined by the planning commission to be consistent with the purpose of this section and which will not impair the present or potential use of adjacent properties;
- J. Beauty salons, barber shops, ~~licensed massage establishments~~, tanning salons, and nail salons;
- K. Bakery;
- L. Fast-food restaurants.
- M. ~~Massage therapy provided by a sole practitioner who has a valid certificate from the State California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 et seq.).~~

SECTION 6. AMENDMENT TO CODE. Section 20.24.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.24.040 Conditional Uses.

The following are conditional uses:

- A. Public and quasi-public uses appropriate to the C-C district;

- B. Creamery, laundry, cleaning, and dyeing establishment employing less than ten (10) persons on the premises;
- C. Used car sales;
- D. Night club, bowling alley, dance hall, roller skating rink;
- E. Automobile service station;
- F. Sidewalk cafe;
- G. Printing and publishing or lithographic shop;
- H. R-4 district residential uses, subject to all restrictions and requirements of that district;
- I. Public utility uses, substations, and communication equipment buildings;
- J. Refrigerated locker plants;
- K. Mortuary;
- L. Heating and air-conditioning sales and services;
- M. Taverns, cocktail lounges, and cardrooms;
- N. Public transportation terminals;
- O. Commercial baking plant;
- P. Commercial laundry plant;
- Q. Drive-in restaurant, drive-through restaurant;
- R. Billiard parlor or pool hall with six (6) or more tables;

- S. Day care facilities for more than twelve (12) children;
- T. Day care facilities for the elderly of twelve (12) or fewer persons;
- U. Retail business of twenty thousand (20,000) square feet or less selling alcoholic beverages for off-site consumption;
- V. Tattoo parlors;
- W. Hookah bars.
- X. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 7. AMENDMENT TO CODE. Section 20.26.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.26.040 Conditional Uses.

The conditional uses are:

- A. Public and quasi-public uses appropriate to the C-T district;
- B. Drive-in theaters;
- C. Cemeteries, mortuaries, crematoria, columbaria;
- D. Animal hospitals, veterinary clinics, and kennels;
- E. Social hall, lodge, fraternal organizations and clubs;

F. Heliports;

G. Signs aver two hundred square feet when adjacent to or across the street from an R district, but not to exceed five hundred square feet of total sign area per lot. Shopping centers located on a lot of 10 acres or larger and having at least two street frontages may be allowed additional sign area over 500 square feet, but not more than one freestanding sign per street frontage;

H. Other retail, wholesale, or heavy commercial uses listed as principal permitted uses in the C-C or C-G districts and not listed in the CT district, appropriate in or necessary to serve a thoroughfare commercial area, but not including residential uses or institutions for human care;

I. Taverns, cocktail lounges and cardrooms;

J. Concrete mixing and asphalt mixing yards;

K. Outdoor secondhand merchandise sales;

L. Carwash;

M. Day care facilities for the elderly of twelve or fewer persons.

N. Retail business of 20,000 square feet or less selling alcoholic beverages for off-site consumption.

O. Beauty salons, barber shop, ~~licensed massage establishments,~~ tattoo parlors, tanning salons, and nail salons.

P. ~~Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage~~

establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 8. AMENDMENT TO CODE. Section 20.28.040, “Conditional Uses,” of the Merced Municipal Code is hereby amended to read as follows:

“20.28.040 Conditional Uses.

The conditional uses are:

- A. Public or quasi-public uses appropriate to the C-G district;
- B. Salvage and wrecking operations;
- C. Commercial recreation facilities, including but not limited to drive-in theaters and bowling alleys;
- D. Concrete mixing and asphalt mixing yards;
- E. Other retail commercial uses, listed as principal permitted uses in the C-T or C-C district, and not listed as permitted uses in the CG district, appropriate in or necessary to serve a general commercial area, but not including residential uses or institutions for human care;
- F. Heliports;
- G. Taverns, cocktail lounges and cardrooms;
- H. Carwash;
- I. Drive-in restaurant, drive-through restaurant;
- J. Fast-food restaurant;
- K. Garment manufacturing facilities;
- L. Pregnancy counseling and testing clinic;

- M. Day care facilities for the elderly of twelve or fewer persons.
- N. Retail business of 20,000 square feet or less selling alcoholic beverages for off-site consumption.
- O. Beauty salons, barber shops, ~~licensed massage establishments~~, tattoo parlors, tanning salons, and nail salons.
- P. Massage establishments, provided that a massage establishment permit has not been revoked at that location within twelve (12) months from the date of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.”

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 10. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2014, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2014, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

**ATTEST:
JOHN M. BRAMBLE, CITY CLERK**

**BY: _____
Assistant/Deputy City Clerk**

(SEAL)

APPROVED AS TO FORM:

City Attorney

Date

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: Zoning Ordinance Amendment #14-01/Environmental Review #14-25

Project Applicant: City of Merced

Project Location (Specific): City of Merced (City wide)

Project Location - City: Merced

Project Location - County: Merced

Description of Nature, Purpose, and Beneficiaries of Project: This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would make massage establishments a conditional use in the C-O (Professional/ Commercial Office), C-N (Neighborhood Commercial), and C-C (Central Commercial) zones and would add required conditions that must be met before a massage establishment can obtain a conditional use permit in the C-T (Thoroughfare Commercial) and C-G (General Commercial) zones. Massage therapy provided by a sole practitioner who has a valid certificate from the State of California as a massage practitioner or massage therapist would still be allowed as principally-permitted uses in the C-O, C-N, and C-C zones.

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: City of Merced

Exempt Status: (check one)

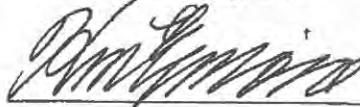
- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: _____
- Statutory Exemptions. State Code Number: _____
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: As defined under the above referenced Section, the proposed project is exempt from CEQA by the general rule that if it can be seen with certainty that there is no possibility that the activity in question can have a significant effect on the environment. This project involves a change to the City's zoning regulations as described above. Such regulations by themselves do not have a direct effect on the environment as there is no physical change to the environment proposed at this time.

Lead Agency: City of Merced

Contact Person: Kim Espinosa

Area Code/Telephone: (209) 385-6858

Signature: 

Date: October 28, 2015 **Title:** Planning Manager

X Signed by Lead Agency

Date Received for Filing at OPR: n/a
(If applicable)

Authority Cited: Sections 21083 and 21110, Public Resources Code
Resources Code

Reference: Sections 21108, 21152, and 21152.1. Public

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #15-21

AGENDA ITEM: 4.2

FROM & Kim Espinosa,
PREPARED BY: Planning Manager

PLANNING COMMISSION
MEETING DATE: Nov. 18, 2015

CITY COUNCIL
MEETING DATE: Dec. 7, 2015
(Tentative)

SUBJECT: **Zoning Ordinance Amendment #14-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would make massage establishments a conditional use in the C-O (Professional/Commercial Office), C-N (Neighborhood Commercial), and C-C (Central Commercial) zones and would add required conditions that must be met before a massage establishment can obtain a conditional use permit in the C-T (Thoroughfare Commercial) and C-G (General Commercial) zones. Massage therapy provided by a sole practitioner who has a valid certificate as a massage practitioner or massage therapist from the State of California would still be allowed as principally-permitted uses in the C-O, C-N, and C-C zones. *PUBLIC HEARING*

ACTION: PLANNING COMMISSION:

Recommendation to City Council

- 1) Environmental Review #14-25 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #14-01

CITY COUNCIL:

Approve/Disapprove/Modify

- 1) Environmental Review #14-25 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #14-01

SUMMARY

Based on recent changes in State Law (AB 1147), the City of Merced is considering changes in the regulations for massage establishments through two ordinances, one involving the Zoning Ordinance (Title 20 of the Merced Municipal Code) and the other involving changes to Chapter 5.44 (Business Licenses and Regulations). The Planning Commission will only be asked to make a recommendation on the Zoning Ordinance changes, but the City Council will consider both ordinances.

The proposed zoning ordinance amendment would do the following:

- a) Massage therapy provided by a sole practitioner who has a valid State certificate as a massage practitioner or massage therapist would be a principally-permitted use in the Commercial Office (C-O), Neighborhood Commercial (C-N), and Central Commercial (C-C) zones under the proposed new Zoning Ordinance. New massage establishments with two or more State-licensed massage practitioner or massage therapists in the C-O, C-N or C-C would first need to obtain a conditional use permit before opening for business within those zones.
- b) All new massage establishments (including establishments run by a sole practitioner) in the General Commercial (C-G) and Thoroughfare Commercial (C-T) zones would need to first obtain a conditional use permit before opening for business in those zones.

Please note that these zoning regulations, if adopted by the City Council, would only affect new businesses or relocations of existing businesses. Current establishments with a valid City business license will be able to continue to operate a massage establishment at its current location without change. However, if the massage establishment chooses to relocate to another address within the City or add one or more additional massage therapists at the same address if they are currently operating as a sole practitioner, then they will be subject to the above requirements.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval to the City Council of a Categorical Exemption (#14-25) and Zoning Ordinance Amendment #14-01 (including the adoption of the Resolution at Attachment F) as described in Attachment A.

PROJECT DESCRIPTION

Based on recent changes in State Law (AB 1147), the City of Merced is considering changes in the regulations for massage establishments through two ordinances, one involving the Zoning Ordinance (Title 20 of the Merced Municipal Code) and the other involving changes to Chapter 5.44 (Business Licenses and Regulations). The Planning Commission will only be asked to make a recommendation on the Zoning Ordinance changes as described in Attachment A, but the City Council will consider both ordinances (Attachments A and B). The proposed ordinances are presented in “red-line” format which shows the additions to the existing ordinance in underline text and deletions in ~~striketrough~~ text.

BACKGROUND

At the August 20, 2014, Planning Commission meeting, the Planning Commission requested staff to schedule an item for Commission discussion regarding massage establishments in the C-O (Professional/Commercial Office) zone in response to a proposed Zone Change request.

In researching the information for the Commission, City staff became aware of pending legislation regarding how local jurisdictions could regulate massage establishments. Previously State Law did not allow local jurisdictions to treat massage establishments any differently from a zoning perspective than other personal services, such as beauty salons, etc. On August 29, 2014, Assembly Bill No. 1147 (“Massage Therapy Act of 2014”) was passed by the California Legislature and sent to the Governor’s desk for signature. On September 18, 2014, the Governor signed the legislation, which became effective as of January 1, 2015.

After analyzing AB 1147, the City Attorney's office prepared some draft concepts for City staff discussion which could change how the City regulates massage establishments in the Commercial zones. (They are not allowed in the residential, industrial, or other zones.) These preliminary concepts for ordinance revisions were presented to the Planning Commission on October 8, 2014. (Those concepts were almost the same as the ones in the currently proposed ordinance at Attachment A.) The Planning Commission thanked staff for their work on the issue and had no suggestions regarding any changes at that time.

Subsequent to the above meeting, City staff continued to analyze the preliminary concepts and worked with other cities and the League of California Cities in determining the best way to respond to AB 1147 (Attachment C), resulting in the currently proposed ordinance.

FINDINGS/CONSIDERATIONS:

General Plan Policies Related to This Application

- A) The proposed zoning ordinance amendments would make changes in response to recent changes in State Law (AB 1147). General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

Proposed Changes to the Zoning Ordinance

The proposed zoning ordinance amendment (Attachment A) would do the following:

- B) Massage therapy provided by a sole practitioner who has a valid State certificate as a massage practitioner or massage therapist would be a principally-permitted use in the Commercial Office (C-O), Neighborhood Commercial (C-N), and Central Commercial (C-C) zones under the proposed new Zoning Ordinance. Massage establishments are currently principally-permitted uses in those same zones. New massage establishments with two or more State-licensed massage practitioner or massage therapists in the C-O, C-N or C-C would first need to obtain a conditional use permit (CUP) before opening for business within those zones. This would be a change from the current ordinance. City staff believes that such provisions will allow most State-licensed massage therapists doing business in Merced to continue to provide services out of doctor's offices and beauty salons without undue restrictions.
- C) All new massage establishments (including establishments run by a sole practitioner) in the General Commercial (C-G) and Thoroughfare Commercial (C-T) zones would need to first obtain a conditional use permit before opening for business in those zones. The current ordinance also requires a CUP for massage establishments in those zones.
- D) In the C-O, C-N, C-C, C-G, and C-T zones, the following would be listed as conditionally permitted uses (requiring a Conditional Use Permit be issued by the Planning Commission): "Massage establishments, provided that a massage establishment permit has not been revoked at that location within 12 months from the date of the application for the CUP and a massage establishment permit is obtained pursuant to Chapter 5.44 of the Merced Municipal Code." City staff believes this provision will give the City more discretion in handling businesses that are not complying with the requirements of the City's

Massage Establishment regulations (Chapter 5.44) and reopening under a different name at the same location.

Proposed Changes to Chapter 5.44 of the Municipal Code

- E) The proposed changes to Chapter 5.44 of the Municipal Code relating to massage establishments would streamline the City's existing massage establishment regulations consistent with changes in state law. The proposed changes would also require that those providing massage services within the City have a state-issued massage practitioner or massage therapist certificate (with certain limited exceptions). Those individuals who currently provide massage services pursuant to an existing City-issued massage technician permit could continue to do so until that permit expires. At that time, he or she would need to obtain a state-issued massage practitioner or massage therapist certificate in order to continue to act as a masseur, masseuse or massage/bodywork practitioner within the City. The draft ordinance changes to Chapter 5.44 is presented at Attachment B. The Planning Commission is NOT being asked to make any recommendations on these ordinance changes, but they are provided here for the Commission's information only.

Notification to Existing Massage Establishments

- F) On November 3, 2015, City staff mailed letters and hearing notices to approximately 30 existing massage establishments that had current City business licenses. The letter can be seen at Attachment D. City staff has received a few responses from those establishments regarding the ordinance changes, mostly asking for information regarding how they would specifically be affected. As noted in the letter, if these zoning regulations are adopted by the City Council, they would only affect new businesses or relocations of existing businesses. Current establishments with a valid City business license will be able to continue to operate a massage establishment at its current location without change. However, if the massage establishment chooses to relocate to another address within the City or add one or more additional massage therapists at the same address if they are currently operating as a sole practitioner, then they will be subject to the new requirements.

Environmental Clearance

- G) The Planning staff has conducted an environmental review (#14-25) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (see Attachment E).

Attachments:

- A) Proposed Ordinance with Changes to the Zoning Ordinance
- B) Proposed Ordinance with Changes to Chapter 5.44
- C) Summary of AB 1147
- D) Letter Sent to Existing Massage Establishments
- E) Categorical Exemption #14-25
- F) Draft Planning Commission Resolution

ATTACHMENTS A, B, & F OF THE PLANNING
COMMISSION STAFF REPORT
ARE NOT INCLUDED HERE
SINCE THEY ARE DUPLICATED ELSEWHERE IN
THIS ADMINISTRATIVE REPORT.



December 3, 2014

To: City and County Officials

From: Assembly Members Susan Bonilla, Jimmy Gomez and Chris Holden

Re: Implementation of AB 1147

As authors of AB 1147, we carried this legislation in order to return broad control over land use to local governments in regulating massage establishments in the best interests of the individual community.

While the bill does not go into effect until January 1, 2015, many jurisdictions are considering, or are in the process of updating their ordinances. There have been numerous questions regarding what AB 1147 authorizes and what it prohibits. As authors of this bill, we have worked together with the League of California Cities, the California State Association of Counties, the American Planning Association, California Chapter and the California Police Chiefs Association to help answer some of these questions.

The answers to these questions are presented for informational purposes only and do not constitute legal advice from the organizations involved with putting together this document. Each jurisdiction should consult with its city attorney/county counsel to gain a complete understanding of AB 1147, its impact on the existing ordinances, and its legal authority to regulate massage therapy businesses.

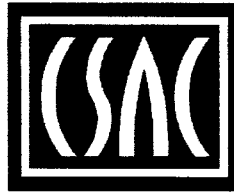
Sincerely,

The Honorable Susan Bonilla
Assembly Member, 14th District

The Honorable Jimmy Gomez
Assembly Member, 51st District

The Honorable Chris Holden
Assembly Member, 41st District

ATTACHMENT C



FAQs with Regards to Implementation of AB 1147

The answers to these FAQs are presented for informational purposes only and do not constitute legal advice from the organizations involved with putting together this document. Each jurisdiction should consult with its city attorney/county counsel to gain a complete understanding of AB 1147, its impact on the jurisdiction's existing ordinances, and its legal authority to regulate massage therapy businesses. The provisions of AB 1147 take effect January 1, 2015.

- 1) Q: Is a massage business that only uses certified massage professionals exempt from local regulation?**
A: No. Article XI, section 7 of the California Constitution as well as Business and Professions Code section 460(c), Government Code section 37101, Business and Professions Code 16000 and Government Code 51034 all recognize the authority of a city to regulate businesses that provide massage therapy services. Under AB 1147, cities and counties may regulate the business that provides the massage therapy services and California Massage Therapy Council (CAMTC) may regulate the individuals who apply for certification to provide massage therapy services. This division of authority and responsibility is reflected in the following statement of Legislative intent: "It is the intent of the Legislature that broad control over land use in regulating massage establishments be vested in local governments so that they may manage those establishments in the best interests of the individual community, and that the requirements and practice of the profession of massage remain a matter of statewide concern, regulation, and oversight" (Business & Professions Code 4600.5(b)).
- 2) Q. What limitations does AB 1147 impose on local regulation of certified massage professionals?**
A. A local jurisdiction may not (1) prohibit a person of one sex from engaging in the massage of a person of the other sex; (2) define a massage establishment as an adult entertainment business, or otherwise regulate a massage establishment as adult entertainment; (3) require a massage establishment to have windows or walls that do not extend from the floor to ceiling or have other internal physical structures (such as windows) that interfere with a client's privacy; (4) impose client draping requirements or otherwise require clients to wear special clothing; (5) prohibit a massage establishment from locking its external doors if the business is owned by one individual with one or no employees; (6) require a massage establishment to post any notice in an area that may be viewed by clients that contain explicit sexual language; (7) require a person certified by CAMTC to take any test, medical examination, or background check; (8) require a person certified by CAMTC to get a license, permit, or other authorization to provide massage unless that person is a business owner; (9) impose a dress code stricter than that imposed by AB 1147; or (10) prohibit massage techniques permitted by CAMTC (Government Code 51034(c)).
- 3) Q: Can a jurisdiction require independent contractors, sole providers, and owners of a massage business to obtain a business license, massage permit, register with the police, or get a background check?**
A: Yes. Under Government Code 51034(c)(8), a city may require a massage business owner, including a sole provider or independent contractor who is CAMTC certified, to obtain a business license, and/or massage permit or other entitlement to carry on the business of massage therapy. Independent contractors in the "business" of providing massage therapy can be regulated as a "business."
- 4) Q: As part of its regulation of massage therapy businesses, can a jurisdiction require the business owner to provide a current listing of its employees and independent contractors, their CAMTC certifications and other relevant information?**

12/03/2014

A: Yes. A jurisdiction's business regulation ordinance may require a business owner to submit a list of all of its employees and independent contractors, their certification status, and notify the local government when this information changes.

5) Q: Can a jurisdiction require a conditional use permit (CUP) for massage businesses?

A: Yes. Business and Professions Code 460(c) provides explicit authorization to adopt land use regulations pertaining to massage businesses. A jurisdiction may amend its zoning ordinance to require a CUP for a massage business. However, a jurisdiction may not impose conditions on the conditional use permit that would violate the provisions of Government Code 51034(c)(1)-(10) as described in Question No. 2. An application for a CUP for a massage business would be considered under the same procedures provided in the jurisdiction's zoning ordinances for other uses for which a CUP is required. Jurisdictions should review their zoning ordinances to determine whether a massage business in operation prior to January 1, 2015 is a lawful non-conforming use.

6) Q: Can a jurisdiction impose a restriction on the location of a massage business? i.e. 300 feet from a school, park etc.

A: AB 1147 gives local governments broad authority to use its Constitutional police power to select zoning districts that are most appropriate for massage. However, a jurisdiction may not define or otherwise regulate a massage establishment as "adult entertainment." A zoning ordinance that imposes a restriction on the location of a massage establishment such as 300 feet from a school or park will be reviewed under a "reasonable and not arbitrary" standard.

7) Q. Can a jurisdiction require individual massage therapists (who operate as employees) to obtain a business license, massage permit, register with the police, or get a background check?

A. No. A jurisdiction may not require an individual massage therapist who holds a certificate from CAMTC and operates as an employee to obtain any kind of license or permit or meet any other educational requirements, or to register with the police or submit to a background investigation (Government Code 51034(c)(8)).

8) Q: What is the best way to make sure that only CAMTC-certified massage professionals work in my jurisdiction?

A. AB 1147 separates the certification of massage therapists from the regulation of massage businesses. The certification of massage therapists is the responsibility of the CAMTC. The regulation of massage businesses is the responsibility of local jurisdictions. Therefore, the best way to make sure that only CAMTC-certified massage professionals work in a jurisdiction is to adopt an ordinance that requires massage businesses to use CAMTC-certified massage professionals only. Another way is to adopt an ordinance that prohibits a person from working in the jurisdiction as a massage therapist without a certificate issued by CAMTC. Because it's possible that the latter way might be interpreted as conflicting with the CAMTC's role in certifying massage therapists, we believe that imposing the restriction on the business is preferable.

9) Q: Can jurisdictions regulate the hours of operation of a massage business?

A: Yes. Jurisdictions can specify hours of operation based upon such factors as a commercial use in a residential neighborhood or other reasonable requirements.

10) Q: Can a jurisdiction prohibit a massage professional from working out of his or her home?

A: A jurisdiction can impose restrictions on massage professionals working out of their homes in the same manner that a jurisdiction regulates other professionals or business owners operating out of their homes. Some local governments regulate business owners operating from their homes through a home occupation permit.

11) Q: Can a jurisdiction limit the number of massage establishments in its jurisdiction?

A: A jurisdiction may limit the number of massage establishments in its jurisdiction if the jurisdiction is able to articulate a reasonable basis for the cap.

12) Q: Is a jurisdiction prohibited from requiring physical improvements, such as transparent exterior windows?

A: No. However, a list of physical improvements that may not be required is described in the answer to Question #2.

13) Q: Can a jurisdiction adopt regulations to prohibit a massage business from opening in the same location as a previous business with illegal activity?

A: Yes, if there is a reasonable basis for this regulation.

14) Q: Can a jurisdiction adopt regulations holding the owner accountable for the actions of its employees and independent contractors?

A: Yes. An ordinance regulating massage businesses may include a provision holding the business owner responsible for how the business is conducted by its employees or independent contractors. In addition, Business and Professions Code section 4607 provides that CAMTC may discipline an owner or operator of a massage business or establishment who is CAMTC-certified for the conduct of all individuals providing massage for compensation on the business premises.

15) Q: May a jurisdiction impose land use regulations on massage businesses that are different than those imposed on other professional services?

A: Yes. This is one of the most significant changes to the law made by AB 1147. Prior to AB 1147, jurisdictions were allowed to regulate businesses using certified massage professionals only to the extent that the jurisdiction uniformly applied those regulations to all other business professionals. This is no longer the law.

16) Q: Can a jurisdiction enter massage establishments and make reasonable inspections?

A: Yes. Jurisdictions can conduct reasonable inspections as part of its ordinance requirements as well as recover the reasonable costs of these inspections and other regulatory requirements.

17) Q: Is a conditional use permit fee of \$20,000-\$30,000 legal?

A: It depends. Fees, charges and rates are generally imposed in return for a specific benefit conferred or privilege granted. A local government has the authority to impose fees, charges and rates under its police power through California Constitution Article XI, §7. A fee may not exceed the estimated reasonable cost of providing the service or regulatory act for which the fee is charged. A fee that does exceed such cost may be considered a special tax. In addition, fees, charges and rates must be reasonable, fair and equitable in nature and proportionately representative of the costs incurred by the regulatory agency. AB 1147 includes the following statement of Legislative intent: "It is the intent of the Legislature that local governments impose and enforce only reasonable and necessary fees...."

18) Q: Can a jurisdiction prohibit condoms on the premises?

A: Yes. A jurisdiction can prohibit condoms on the premises of a massage establishment as a standard in its ordinance if there is a reasonable basis for this requirement.

19) Q: How can a jurisdiction handle a massage business that (after a police sting and surrender of the business license) transfers the business to another individual?

A: A jurisdiction may include in its ordinance a requirement that prohibits a massage business permit from being transferred without notice to and consent of the local government.

20) Q: Can a jurisdiction adopt and enforce a dress code for massage therapists?

A: Yes. AB 1147 includes certain restrictions on how certified massage therapists may dress. A jurisdiction may include those restrictions in its ordinance. Be aware, however, that a jurisdiction may not include stricter requirements for certified therapists. If dress code restrictions are included in a jurisdiction's ordinance, and an employee violates those restrictions, then the jurisdiction may enforce those provisions of its ordinance against the business as it determines appropriate. Violations of a municipal code may be enforced civilly, criminally, or through administrative enforcement. A jurisdiction is also encouraged to use the procedure outlined in question no. 23 to notify CAMTC of a violation.

12/03/2014

21) Q: What impact will AB 1147 have on existing massage businesses?

A: Each jurisdiction should carefully review the provisions of its municipal code regarding non-conforming uses of land and imposing new regulations on existing businesses.

22) Q: Can a jurisdiction impose a temporary moratorium on approval of massage businesses?

A: Yes. AB 1147 takes effect on January 1, 2015. State law allows a city to adopt an interim ordinance that prohibits otherwise allowed uses when those uses conflict with a pending land use study. Such a measure requires a 4/5 vote of the jurisdiction; must contain a finding that there is a current and immediate threat to the public health, safety or welfare; and may be adopted without following the notice and adoption procedures required for other ordinances. The measure has an initial duration of 45 days and may be extended as specified by Government Code 65858. Jurisdictions should exercise caution before imposing a temporary moratorium if they have previously adopted a moratorium on the approval of massage businesses.

23) Q: Is there a process for a jurisdiction to follow if it wishes to inform CAMTC that it believes that a certified massage therapist is in violation of state or local law?

A: Yes. A city is encouraged to report that information to CAMTC by going to CAMTC's homepage (www.camtc.org) and clicking on the link to "File a Complaint Against a CAMTC Certificate Holder."

24) Q: If a massage therapist with a CAMTC certificate is arrested for prostitution or violating the Sex Offender Registration Act, will his or her certificate be revoked?

A: If CAMTC receives notice that a certificate holder has been arrested and charges have been filed alleging prostitution or a violation of the Sex Offender Registration Act, the council is required to immediately suspend the certificate and notify the city or county in which the certificate holder lives or works of the suspension. If the person is convicted, the certificate is permanently revoked. If a certificate holder commits a different act that is punishable as a sexually related crime or otherwise violates provisions of AB 1147, CAMTC may (but is not required to) take disciplinary action including, for some violations, suspending the certificate.

25) Q: Who should jurisdictions report violations to?

A: Violations of local ordinances should be prosecuted administratively, civilly, or criminally in accordance with the provisions of the jurisdiction's municipal code. If a jurisdiction believes that a CAMTC certified massage therapist is violating state law, then the jurisdiction is additionally encouraged to inform CAMTC as described under question no.23.

26) Q. What prompts the inspection/investigation of a massage therapy school that could change the status to "unapproved"?

A: CAMTC explains that when it receives credible information alleging that the massage therapy school has violated one of the provisions of its Procedures for Un-Approval of Schools (available at www.camtc.org/Schools.aspx); this information prompts the investigation of a school. CAMTC also looks for anomalies or changing patterns in applications and transcripts that may warrant investigation.

27) How does CAMTC obtain the actual certificate of those persons whose certification has been suspended or revoked?

A: CAMTC explains that it requests that revoked certificate holders return their certificates and ID cards to CAMTC. In order to check whether a specific person has an active and valid CAMTC certificate, local jurisdictions can check the "Verify Certification" link on CAMTC's website.

28) Q. Does AB 1147 apply to massage therapists who do not have a CAMTC certificate?

A. No. AB 1147 only applies to massage therapists who have a CAMTC certificate. AB 1147 does not affect the authority of a city to regulate massage therapists who do not have CAMTC certificates or massage businesses who employ massage therapists who do not have CAMTC certificates.

CITY OF MERCED

"Gateway to Yosemite"



November 3, 2015

To: Existing Massage Establishments in the City of Merced

You are receiving this letter because you have a current business license with the City of Merced for a massage establishment. Based on recent changes in State Law (AB 1147), the City of Merced is considering changes in the regulations for massage establishments through two ordinances, one involving the Zoning Ordinance (Title 20 of the Merced Municipal Code) and the other involving changes to Chapter 5.44 (Business Licenses and Regulations).

The Planning Commission will be holding a public hearing to make a recommendation to the City Council on the proposed ordinance involving the Zoning Ordinance as outlined below on Wednesday, November 18, 2015, at 7:00 p.m. in the City Council Chambers in the Merced Civic Center at 678 West 18th Street, Merced. (The Planning Commission will only be asked to make a recommendation on the Zoning Ordinance changes.) The City Council is then expected to hold a public hearing on both proposed ordinances on Monday, December 7, 2015, at 7:00 p.m. at the same location. You are welcome to attend one or both meetings and give your input to the Planning Commission and City Council regarding this proposal.

The proposed zoning ordinance would do the following:

- a) Massage therapy provided by a sole practitioner who has a valid State certificate as a massage practitioner or massage therapist would be a principally-permitted use in the Commercial Office (C-O), Neighborhood Commercial (C-N), and Central Commercial (C-C) zones under the proposed new Zoning Ordinance. New massage establishments with two or more State-licensed massage practitioner or massage therapists in the C-O, C-N or C-C would first need to obtain a conditional use permit before opening for business within those zones.
- b) All new massage establishments (including establishments run by a sole practitioner) in the General Commercial (C-G) and Thoroughfare Commercial (C-T) zones would need to first obtain a conditional use permit before opening for business in those zones.

Please note that these zoning regulations, if adopted by the City Council, would only affect new businesses or relocations of existing businesses. You will be able to continue to operate your existing massage establishment at your current location without change. However, if you choose to relocate to another address within the City or add one or more additional message therapists at the same address if you are currently operating as a sole practitioner, then you will be subject to the above requirements.

ATTACHMENT D

678 West 18th Street • Merced, California 95340

Proposed Changes to Massage Establishment Regulations

November 3, 2015

Page 2

The proposed changes to Chapter 5.44 of the Municipal Code relating to massage establishments would streamline the City's existing massage establishment regulations consistent with changes in state law. The proposed changes would also require that those providing massage services within the City have a state-issued massage practitioner or massage therapist certificate (with certain limited exceptions). Those individuals who currently provide massage services pursuant to an existing City-issued massage technician permit could continue to do so until that permit expires. At that time, he or she would need to obtain a state-issued massage practitioner or massage therapist certificate in order to continue to act as a masseur, masseuse or massage/bodywork practitioner within the City.

If you have any questions about the proposed ordinances or would like to confirm which zoning district you are currently located in, please feel free to contact City Planning staff at (209) 385-6858 or come by our offices at 678 West 18th Street.

Sincerely,



Kim Espinosa
Planning Manager

cc: Ken Rozell, Senior Deputy City Attorney
David Gonzalves, Director of Development Services

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: Zoning Ordinance Amendment #14-01/Environmental Review #14-25

Project Applicant: City of Merced

Project Location (Specific): City of Merced (City wide)

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

Description of Nature, Purpose, and Beneficiaries of Project: This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would make massage establishments a conditional use in the C-O (Professional/ Commercial Office), C-N (Neighborhood Commercial), and C-C (Central Commercial) zones and would add required conditions that must be met before a massage establishment can obtain a conditional use permit in the C-T (Thoroughfare Commercial) and C-G (General Commercial) zones. Massage therapy provided by a sole practitioner who has a valid certificate from the State of California as a massage practitioner or massage therapist would still be allowed as principally-permitted uses in the C-O, C-N, and C-C zones.

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: City of Merced

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));
- Categorical Exemption. State Type and Section Number: _____
- 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 is exempt from CEQA by the general rule that if it can be seen with certainty that there is no possibility that the activity in question can have a significant effect on the environment. This project involves a change to the City’s zoning regulations as described above. Such regulations by themselves do not have a direct effect on the environment as there is no physical change to the environment proposed at this time.

Lead Agency: City of Merced

Contact Person: Kim Espinosa **Area Code/Telephone:** (209) 385-6858

Signature:  **Date:** October 28, 2015 **Title:** Planning Manager

X Signed by Lead Agency **Date Received for Filing at OPR:** n/a
(If applicable)

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

ATTACHMENT E

CITY OF MERCED
Planning Commission

Resolution #3057

WHEREAS, the Merced City Planning Commission at its regular meeting of November 18, 2015, held a public hearing and considered **Zoning Ordinance Amendment #14-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would make massage establishments a conditional use in the C-O (Professional/Commercial Office), C-N (Neighborhood Commercial), and C-C (Central Commercial) zones and would add required conditions that must be met before a massage establishment can obtain a conditional use permit in the C-T (Thoroughfare Commercial) and C-G (General Commercial) zones. Massage therapy provided by a sole practitioner who has a valid certificate as a massage practitioner or massage therapist from the State of California would still be allowed as principally-permitted uses in the C-O, C-N, and C-C zones; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through G of Staff Report #15-21; 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 recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #14-25, and approval of Zoning Ordinance Amendment #14-01, as set forth in Attachment A of Staff Report #15-21.

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

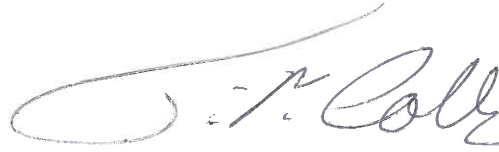
AYES: Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod,
and Chairperson Colby
NOES: None
ABSENT: None
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3057

Page 2

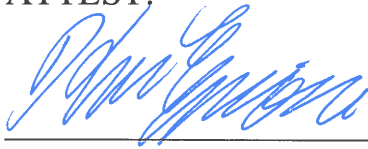
November 18, 2015

Adopted this 18th day of November 2015



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

n:shared:planning:PC Resolutions:ZOA#14-01



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item M.1.

Meeting Date: 12/7/2015

Report Prepared for City Council by: *Bradley Grant - Charter Officer and Finance Officer and Kelly Fincher - Chief Deputy City Attorney*

SUBJECT: Approval of Employment Agreement for Position of Interim City Manager and Adoption of Resolution Approving Appointment of John M. Bramble to Interim City Manager Pursuant to California Government Code Sections 21221(h) and 7522.56

REPORT IN BRIEF

Authorization request to fill vacant City Manager position with a California Public Employee's Retirement System (CalPERS) Retired Annuitant.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the terms of an employment agreement with John M. Bramble to serve as Interim City Manager; and,
- B. Authorizing the Mayor to execute an employment agreement with Mr. Bramble after his official retirement date; and,
- C. Adopting **Resolution 2015-47**, a Resolution of the City Council of the City of Merced, California, making a determination of special need for an Interim City Manager pursuant to California Government Code sections 21221(h) and 7522.56.

ALTERNATIVES

- 1. Approve, as recommended; or,
- 2. Deny; or
- 3. Take no action

AUTHORITY

California Government Code Sections 21221 (h) and 7522.56, and Section 500 of the City of Merced Charter.

CITY COUNCIL PRIORITIES

The City Council is responsible for the appointment of the City Manager.

DISCUSSION

The Public Employees' Pension Reform Act (PEPRA) made substantial changes to public employee pension laws in California, including the requirement that retired public employees must wait 180 days before returning to work for an employer in the same retirement system from which they receive a monthly retirement benefit.

There are several exceptions to this rule, including the exception set forth in California Government Code section 21221, subdivision (h), which allows a retired annuitant to be appointed before the expiration of 180 days to a vacant position requiring specialized skills, such as an Interim City Manager, if the following requirements are met: (1.) the position to which the appointment is made is vacant and there is an active recruitment for a permanent position; (2.) the governing body certifies the nature of the position and the appointment are necessary to fill a critically needed position; (3.) the person only be appointed once to the vacant position; (4.) the employment is limited to 960 hours in a fiscal year; (5.) the employee is payed an hourly rate equal to the monthly base salary paid for the position; and (6.) the employee does not receive a "Golden Handshake" or any other retirement related incentive.

Because of the retirement of City Manager Mr. Bramble, effective December 4, 2015, the City Manager position is vacant. A recruitment is in process to fill the position but it is anticipated that it may be a month or two before the position is filled.

Government Code sections 21221(h) and 7522.56 require cities who seek to employ a retired CalPERS annuitant before the expiration of the 180 day post-retirement waiting period certify the hiring is necessary to fill a critical position.

The appointment of an Interim City Manager is necessary to fill a critical position within the City. The City Manager is the chief administrative officer and head of the administrative branch of the City government.

Based on these facts, Mr. Bramble's hiring as Interim City Manager for a temporary period of time until the new City Manager can be hired and begin employment is necessary to fill the critical position of City Manager.

The Resolution For Exception To the 180-day Wait Period and employment agreement are attached.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. Resolution
2. Employment Agreement

RESOLUTION NO. 2015-_____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA, FOR
EXEMPTION TO THE 180-DAY WAIT PERIOD
GOVERNMENT CODE SECTIONS 7522.56 &
21221(h)**

WHEREAS, in compliance with Government Code section 7522.56 the City Council of the City of Merced must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, John M. Bramble retired from City of Merced in the position of City Manager, effective December 6, 2015; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 3, 2016, without this certification resolution; and

WHEREAS, section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City Council, the City of Merced and John M. Bramble certify that John M. Bramble has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council hereby appoints John M. Bramble as an interim appointment retired annuitant to the vacant position of City Manager for the City of Merced under Government Code section 21221(h), effective December 14, 2015; and

WHEREAS, an appointment under Government Code section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the recruitment for the vacant position of City Manager has commenced; and

WHEREAS, this section 21221(h) appointment shall only be made once and therefore will end on or before February 5, 2016; and

WHEREAS, the entire employment agreement, contract or appointment document between John M. Bramble and the City of Merced has been reviewed by this body and is attached herein; and,

WHEREAS, the matters, issues, terms or conditions related to this employment and appointment have not and will not be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum base salary for this position is \$175,086.91 and the hourly equivalent is \$84.1764, and the minimum base salary for this position is \$175,086.91 and the hourly equivalent is \$84.1764; and

WHEREAS, the hourly rate paid to John M. Bramble will be \$84.1764; and

WHEREAS, John M. Bramble has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

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

SECTION 1. The City Council of the City of Merced hereby certifies the nature of the appointment of John M. Bramble as described herein and detailed in the attached employment agreement/contract/appointment document and that this appointment is necessary to fill the critically needed position of City Manager for the City of Merced by December 14, 2015, in order to provide leadership, management and continuation of municipal services for the City of Merced until a permanent City Manager is hired and commences employment.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2015, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY

Kelly Fincher 12/1/15
City Attorney Date

**AT-WILL INTERIM CITY MANAGER
EMPLOYMENT AGREEMENT**

THIS AT-WILL INTERIM CITY MANAGER EMPLOYMENT AGREEMENT is by and between the City of Merced, a California Charter Municipal Corporation, hereinafter referred to as “City,” and John M. Bramble, hereinafter referred to as “Employee,” and collectively the “Parties” is entered into on this _____ day of December, 2015.

RECITALS

WHEREAS, the City’s City Manager position is a regular position that will be vacant on December 6, 2015, and for which the City is actively conducting a recruitment for a permanent appointment; and

WHEREAS, during this recruitment period, the City will have an immediate need for an employee to perform the duties of the position of City Manager, which is a position that is critically necessary to the on-going functions of the City and requires highly-specialized senior management and leadership skills; and

WHEREAS, the City desires to employ Employee as a temporary, at-will Interim City Manager of the City of Merced while the City conducts and finalizes the recruitment for a permanent City Manager; and

WHEREAS, Employee is competent and qualified to perform the services required by this Agreement and Employee desires to perform and assume responsibility for the provision of professional services to the City temporarily as the Interim City Manager; and

WHEREAS, the City anticipates that the City Manager position will be filled with a permanent replacement within 90 days; and

WHEREAS, Employee’s employment is authorized by Government Code section 21221(h), which allows CalPERS retired annuitants to be employed without reinstatement from retirement and before the expiration of the 180-day waiting period on an interim basis to fill a vacant position while the recruitment for a permanent placement is being conducted; and

WHEREAS, the Mayor and City Council wishes to establish the terms and conditions of Employee's temporary employment as Interim City Manager by way of this Agreement.

NOW, THEREFORE, the Parties do mutually agree as follows:

1. DUTIES.

1.1 Duties.

City hereby agrees to temporarily employ Employee as an At Will, Interim City Manager of the City of Merced to temporarily perform the functions and duties of the City Manager as specified in the Charter, Ordinances and Resolutions of the City, and to perform such other legally permissible and proper duties and functions as the Mayor and City Council shall from time to time assign.

1.2 Conflicts Prohibited.

During the term of this Agreement, Employee will not acquire or maintain any direct or indirect financial interest or engage in any business transaction which conflicts in any manner or degree with his performance of his duties and obligations pursuant to this Agreement.

2. TERM.

2.1 Term.

The term of this Agreement shall commence on December 14, 2015, and shall automatically terminate on February 5, 2016, unless earlier terminated prior to this date by either party (hereafter "Term"). If the City Council appoints a permanent City Manager before February 5, 2016, Employee's services and this Agreement shall terminate on such date determined by the City Council and communicated to Employee in writing.

2.2 Employment Status.

Employee is aware that his employment is At-Will, and that his employment under this Agreement can be terminated at any time with or without cause or notice. Employee understands and agrees that the terms of his employment are

governed only by this Agreement and that he will not acquire a property interest in his employment pursuant to this Agreement.

2.3 Termination by City and Employee.

The City Council may terminate this Agreement at any time with or without cause. Employee may also terminate this Agreement at any time with or without cause, however, it is requested that Employee provide the City Council with at least two (2) weeks advanced written notice before the effective date of his termination, unless a shorter time is acceptable to the Council.

2.4 No Reappointment.

Employee shall not be eligible to be reappointed to this position following the expiration of this Agreement.

3. COMPENSATION.

3.1 Compensation.

Employee shall be paid at the hourly rate of \$84.1764 for each hour worked under this Agreement. In accordance with Government Code section 21221(h), this hourly rate was computed by taking the monthly salary of the City Manager and dividing it by 173.333. This hourly rate is not less than the minimum, nor in excess of the maximum paid by the City to other employees performing comparable duties as listed on a publically available pay schedule for the City manager position. Employee will be paid on regularly scheduled City payroll dates and the hourly pay shall be subject to any applicable payroll taxes and withholdings.

Employee shall not receive any benefits, incentives, compensation in lieu of benefits, paid time off or any other form of compensation other than his hourly rate of pay for hours worked. Specifically, Employee understands that he is not entitled to benefits provided to regular status City employees such as retirement benefits or contributions, medical, dental, vision, life or disability insurance, paid sick leave, paid vacation, paid holidays or any other paid or unpaid leave or severance pay. Employee will be covered by the City's Worker's Compensation Insurance.

3.2 Exempt Position and 960 Hour Limitation.

This position is exempt from the Fair Labor Standards Act overtime pay requirements. It is expected that this temporary position will average approximately 40 hours a week, with Employee's working hours coinciding with the City's regular business hours, plus evening hours on an as needed basis to attend City Council meetings and other evening events which require the attendance of the Interim City Manager. As a CalPERS retiree, Employee is allowed to work no more than 960 hours per fiscal year for any public employers. Pursuant to Government Code sections 7522.56(d) and 21221(h), all hours worked by Employee for the City will count toward the 960-hour fiscal year limitation. Accordingly, all hours worked by Employee must be reported to the City so that the hours may in turn be reported to CalPERS.

3.3 Reimbursable Expenses.

Employee shall be reimbursed by City in accordance with the City's travel policy (and state and federal law) for all authorized and necessary travel undertaken by Employee in the performance of his duties under this Agreement.

3.4 No Unemployment Benefits Received by Employee

Employee certifies and warrants that within the preceding twelve (12) months, he has not received any unemployment insurance payments for retired annuitant work for any public employer.

4. GENERAL PROVISIONS

4.1 Indemnification.

The City shall defend, hold harmless and indemnify Employee against any tort, professional liability, claim or demand or other legal action arising out of an alleged act or omission occurring within the course or scope of Employee's services under this Agreement. This provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside of the course and scope of his employment.

4.2 Non-Assignment of Agreement.

This Agreement is not assignable by either the City or Employee.

4.3 Entire Agreement.

This Agreement constitutes the entire agreement and understanding of the parties and contains all of the covenants and agreements between the parties with respect to such employment. This Agreement supersedes any and all prior or contemporaneous contracts, agreements, negotiations, or understandings, either oral or in writing, between the parties.

4.4 Amendment.

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

4.5 Severability.

If any provision of this Agreement, or portion thereof is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force or effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

4.6 Venue.

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

4.7 Counterparts.

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

4.8 Interpretation.

This Agreement shall not be construed against any one party but shall be construed as if jointly prepared by the Parties.

4.9 Effect of Waiver.

The failure of either party to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power.

4.10 Employee's CalPERS Retirement Benefits

Employee acknowledges that in entering into this Agreement, he has made no reliance on any representations from the City or any of its employees regarding the impact that this Agreement has or will have on his CalPERS retirement benefits, status and/or obligations. That being true, Employee releases the City from any and all CalPERS related claims or liabilities that may arise due to his employment as Interim City Manager pursuant to this Agreement.

4.11 Effective Date.

This Agreement shall not become effective until it has been approved by the City Council and signed by the Mayor and Employee.

5. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

To City: Mayor
City of Merced
678 West 18th Street
Merced, California 95340

To Employee: John M. Bramble
Interim City Manager
City of Merced
678 West 18th Street
Merced, California 95340

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by the Assistant City Clerk, and executed by the Employee on the date first above written.

CITY OF MERCED


BY: _____
Mayor

EMPLOYEE:


John M. Bramble

ATTEST:

BY: _____
Assistant City Clerk

215169
 12-2-15

Finance Officer Date.

APPROVED AS TO FORM:

BY:  12/1/15
City Attorney Date

Funds Avail cdk AT 12/2/15
001-0201-511-03-00
\$29,100 AT



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item M.2.

Meeting Date: 12/7/2015

Report Prepared by: Frank Quintero, Director, Economic Development

SUBJECT: Follow up Reports Regarding Downtown Discussion

REPORT IN BRIEF

This follow up session provides reports on the Downtown Discussion requested at the November 16, 2015 City Council Meeting.

RECOMMENDATION

Staff is seeking direction from Council to form a Downtown/Central Merced Ad Hoc Group. Staff would return to Council with recommendations on the Group's composition and purpose.

DISCUSSION

A study session was held at the City Council meeting of November 16, 2015 concerning the report prepared by Mayor Pro Tem Pedrozo and Council Member Dossetti regarding Downtown Merced issues. Discussion and testimony focused heavily on homelessness and public safety. Prior to closing the study session, the City Council asked that a follow-up presentation be prepared for the City Council meeting on December 7, 2015 on the following items:

- Homeless Van Services provided by the Turlock-based Gospel Mission (presentation by United Way)
- Progress report and update from the Merced Main Street Association
- Office of Economic Development Assistance to the Merced Main Street Association
- Possible Police Department staffing for the Downtown Core

At the December 21, 2015 City Council meeting, the Council will decided upon dates for their annual Town Hall meetings to be held at locations in North and South Merced. Council will also be deciding on a date for an additional Town Hall meeting to be held in Central Merced.



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item N.1.

Meeting Date:

Report Prepared by: *John M. Bramble, City Manager*

SUBJECT: Approval of Employment Agreement with New City Manager

REPORT IN BRIEF

Consider approving the employment agreement with the new City Manager.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Employment Agreement and announcing the new City Manager/City Clerk; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

ALTERNATIVES

- 1. Approval of the Employment Agreement; or,
- 2. Request amendments to the Employment Agreement.

AUTHORITY

The City Council has the authority to appoint a City Manager in accordance with the City Charter and Merced Municipal Code.

CITY COUNCIL PRIORITIES

As provided for in the 2015/2016 Adopted Budget.

DISCUSSION

The City Council has conducted a national recruitment for a new City Manager/City Clerk to lead the City's organization. The City Council has carefully evaluated the candidates that applied for the position and has conducted a full evaluation of the potential employee's knowledge, skills and administrative experience.

The City Council will name a new City Manager after a final review of the Employment Agreement.

The Employment Agreement provides the details for employment of the new City Manager and specifics on the term of the Agreement, compensation, health and other related benefits plus the

File #: 15-361

Meeting Date:

conditions of employment.

As a Charter Officer of the City, the terms and conditions of the Employment Agreement must be approved at a regular City Council Meeting.