

**CITY OF MERCED
Planning Commission**

Resolution #4117

WHEREAS, the Merced City Planning Commission at its regular meeting of July 5, 2023, held a public hearing and considered **Conditional Use Permit #1272**, initiated by Paramjeet Singh, on behalf of Encina Investment Group Mainplace Merced, LLC, property owner. This application involves a request for alcohol sales (beer, wine, and liquor) for off-site consumption for a new convenience market at 429 W. Main Street, generally located on the north side of Main Street, approximately 75 feet east of Canal Street, with a General Plan designation of Regional/Community Commercial (RC), within a Zoning classification of Central Commercial (C-C). The subject site is more particularly described as a portion of Lots 11, 12, 13, 14, and 15 from Block 162 on Recorded Map entitled “Supplemental Map to Town of Merced,” recorded in Volume 2, Page 12, in Merced County Records; also known as a portion of Assessor’s Parcel Number (APN) 031-143-028; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J (Exhibit B) of Staff Report #23-515; and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Conditional Use Permits in Merced Municipal Code Section 20.68.020 (E), and other Considerations as outlined in Exhibit B; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #23-18, and approve Conditional Use Permit #1272, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

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

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

PLANNING COMMISSION RESOLUTION #4115

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July 5, 2023

Adopted this 5th day of July 2023

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachments:

Exhibit A - Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution #4117
Conditional Use Permit #1272

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) -- Attachment C of Staff Report #23-515 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, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City’s attorney’s fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal

EXHIBIT A

OF PLANNING COMMISSION RESOLUTION #4117

defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.

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. A grease interceptor may be required. This will be determined at the building permit stage based on whether food is prepared on-site and waste generated.
8. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
9. The applicant shall work with the City's Refuse Department to determine if a recycling container will be required to comply with AB 341. If an additional container(s) is required, it shall be enclosed within a refuse enclosure built to City Standards, unless otherwise approved by the City Engineer.
10. Full public improvements shall be installed/repared if the permit value of the project exceeds \$100,000.00. 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.
11. 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.
12. Business signage and minor exterior changes to the building shall be reviewed with a staff level design review permit. Signage shall comply with Merced Municipal Code Section 17.36 (Article IV) – Regulations for Downtown.

13. Future signage, and building lights shall be shielded or oriented in a way that does not allow “spill-over” onto adjacent lots or be a nuisance to adjacent residential properties. This shall be done 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.
14. No self-illuminated advertising for beer or wine shall be located on the building or in the windows.
15. No sale of alcoholic beverages shall be made from a drive-in window.
16. No display or sale of beer, wine, or liquor shall be made from an ice tub.
17. Employees on duty between the hours of 10 p.m. and 2 a.m. shall be at least 21 years of age to sell beer and wine.
18. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws and other nuisance-related issues.
19. The area within the convenience market dedicated to the display and sale of alcoholic beverages (beer, wine, and distilled spirits) shall not be more than 165 square feet as shown in the floor plan at Attachment C of Staff Report #23-515.
20. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) arise as determined by the Police Chief including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the conditional use permit may be subject to review and revocation by the City of Merced after a public hearing and in conformance with the procedures outlined in the Merced Municipal Code.
21. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton, except for wine bottles at or over 750 ml.
22. Approval of CUP #1272 is contingent upon City Council approval of a Finding of Public Convenience or Necessity. Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, the business (for the convenience market) shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.

23. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.

**Findings and Considerations
Planning Commission Resolution #4117
Conditional Use Permit #1272**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Regional/Community Commercial (RC) and the Zoning classification of Central Commercial (C-C) with approval of a Conditional Use Permit. Alcohol sales for off-site consumption requires a conditional use permit per MMC 20.44.010 – Alcoholic Beverage Sales for Off-Premises Consumption.

Public Improvements/City Services

- B) Any damaged or missing public improvements shall be repaired if the permit value of the project exceeds \$100,000.00. The need for repairs or replacement of any missing improvements would be evaluated at the building permit stage by the City's Engineering Department (Condition #10).

Parking

- C) The subject site is located within the City's Downtown Parking District which does not require parking for businesses located on the first floor of a building. City Parking Lots 1, 7, 8, 9, 10, 12, and 14 are located within 400 feet (1 block) of the subject site. Supplemental parking is provided behind the building (approximately 26 spaces) for employees working at Mainplace Merced.

Building Elevations

- D) The applicant is not proposing any modifications to the exterior of the building. The building was part of a larger remodel with the Regal Hollywood movie theatre during the early 2000's. The exterior of the building has a modern design with a stucco finish, brick, and large storefront windows. The applicant is not proposing any modifications to the exterior of the building. Exterior modifications such as exterior paint or wall signage shall require a staff level design review permit (Condition #12).

Floor Plan

- E) The subject site is a recently created suite of 1,750 square feet. The proposed floor plan includes a cashier counter by the primary entrance along Main Street, sales floor area, beverage counter, walk in coolers, an office, bathroom, electrical room, and a restroom. Beer and wine selection would be stocked within the walk-in coolers. Additional wine and distilled spirits would be shelved behind the employee counter as shown at Attachment C of Planning Commission Staff Report #23-515). In total, a maximum of 165 square feet of sales floor area would be dedicated to alcohol sales (Condition #23).

Neighborhood Impact

- F) The subject site is located in Downtown Merced and is surrounded by a variety of commercial and entertainment businesses. Entertainment businesses are common throughout the neighborhood with the Merced Theater (live performance), 17th Street Public House (pub), Vinho's Wine Lounge, The Den (hookah lounge), Regal Hollywood (movie theatre), The Partisan (pub), O'Ryleigh's Tavern (pub), Casino Merced, Merced Playhouse Merced (live theatre), El Palacio Night Club, Tioga Sequoia (tap room), and Hi-Fi Wine (wine bar) all located within 1,400 feet of the subject site. Given the abundance of alcohol sales and entertainment businesses in the Downtown area, and the fact that this site was previously approved for a nightclub with alcohol sales, staff does not anticipate that this approval would create any unusual circumstances for the neighborhood.

A Public Hearing Notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. As of the date that this report was prepared, staff has not received any comments or concerns from the public about this request.

Signage

- G) The applicant has yet to determine the types and locations of signs they would install. The subject site is located within the City's Design Review District and would require a staff level Design Review Permit prior to installation of any signage and require compliance with Merced

Municipal Code Section 17.36 (Article IV) – Regulations for Downtown (Condition #12).

Alcohol Sales

- H) The Merced Municipal Code requires a Conditional Use Permit for alcohol sales for markets under 20,000 square feet (MMC 20.44.010). In addition, in accordance with state law, if the census tract in which a business is located is considered by the Alcoholic Beverage Control (ABC) to be over-concentrated with licenses for alcohol sales for off-site consumption, a Finding of Public Convenience or Necessity is required to be approved by the City Council. This site is located within Census Tract 13.02 which is allowed 2 off-sale retail licenses (Type 20 or Type 21). There are currently 2 licenses issued in this census tract. Therefore, the addition of another license would cause this census tract to be over-concentrated.

In order for the Planning Commission to approve or deny a request for the sale of alcoholic beverages for off-site consumption, they must consider the following criteria and make findings to support or deny each criteria per MMC 20.44.010:

Criteria #1

The proposed use will not result in an "undue concentration" of establishments dispensing alcoholic beverages as defined by Section 23958 and 23958.4 of the California Business and Professional Code and giving consideration to the California Department of Alcoholic Beverage Control's guidelines related to number and proximity of such establishments within a 1,000-foot radius of the site.

Finding #1

The subject site is located within Alcoholic Beverage Control Census Tract 13.02. In checking with the State of California Alcoholic Beverage Control District, with the issuance of another license in this census tract it would become overconcentrated with alcohol licenses. Due to this, the applicant would need a Finding of Public Convenience or Necessity which the City of Merced requires be approved by the City Council. Approval of CUP #1272 is contingent upon City Council approval of a Finding of Public Convenience or Necessity (refer to Condition #23).

Criteria #2

The proposed use will not adversely affect the economic and societal welfare of the pertinent community or residentially zoned community in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds, and other similar uses; and other establishments dispensing, for sale or other considerations, alcoholic beverages including beer and wine.

Finding #2:

There are residential uses located approximately 350-400 feet to the west of the subject site (the Loft Apartments) and additional residential uses approximately 500 feet to the east (apartments above the Merced Theater). All of these units are located within a Central Commercial (C-C) Zone. Additional residential uses in the C-C zone are located within a 600-foot and 1,000-foot radius. The nearest park is Bob Hart Square approximately 250 feet west of the subject site. The nearest school is East Campus Educational Center and Independence High School approximately 2,400 feet east of the subject site (Attachment D of Staff Report #23-515).

Criteria #3

The crime rate in the area of the proposed site. Particular attention shall be given to those crimes involving public drunkenness, the illegal sale of narcotics, disturbing the peace, and disorderly conduct.

Finding #3:

Between June 1, 2022, and June 7, 2023, the Merced Police Department recorded approximately 1,000 incidents within a 500-foot radius of the subject site (refer to the map at Attachment E of Staff Report #23-515). The table following shows the number of incidents within that area involving public intoxication, assaults, MMC violations, and narcotics violations (totaling 139 incidents during the 12-month period). The number of incidents reported City-wide for the same time period was approximately 73,000. Based on the total number of calls within the City, the 1,000 calls to this area equals 0.19% of the overall calls for service within the City. As shown on the attached Crime Hot Spot Map for the City of Merced (Attachment F of Staff Report #23-515), crime rates in this area are considered Very High compared to the rest of the

City. However, most of the incidents surrounding the site were not related to alcohol.

Incidents and Cases Reported (June 1, 2022 – June 7, 2023)

Incident/Case Type	Number of Incidents
Public Intoxication	7
Disturbance (assaults)	127
MMC*	0
Narcotics violations	5

*Municipal Code Violations regarding open containers, drinking in public, etc.

Planning staff consulted with the Merced Police Department regarding alcohol sales at this location. The Police Department has determined that they would support the sale of alcohol for off-site consumption if specific conditions are included to reduce the potential for alcohol-related incidents such as Conditions #15 through #23. Based on the information provided by the Police Department, staff does not anticipate that the approval of this request would adversely affect the economic and social welfare of the surrounding area.

Conditional Use Permit Findings

I) In order for the Planning Commission to approve or deny a conditional use permit, they must consider the following criteria and make findings to support or deny each criteria per MMC 20.68.020 (E) – Findings for Approval.

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

As shown under Finding A, the proposed project complies with the General Plan designation of Regional/Community Commercial (RC) and the zoning classification of Central Commercial (C-C) with approval of this conditional use permit.

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

As shown under Finding D – Building Elevations, Finding E – Floor Plan, and Finding F -Neighborhood Impact, staff believes that the location, size, design, and operating characteristics of the proposal would be compatible with existing and future land uses in the vicinity.

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

As shown under Finding H– Alcohol Sales, staff does not anticipate that this proposal would be detrimental to the public health, safety, and welfare of the City. Planning staff consulted with the Merced Police Department regarding alcohol sales at this location; The Police Department has determined that they would support the sale of alcohol for off-site consumption if specific conditions are included to reduce the potential for alcohol-related incidents such as Conditions #15 through #23. Based on the information provided by the Police Department, staff does not anticipate that the approval of this request would adversely affect the public health, safety, and welfare of the City.

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

The proposed convenience market is properly located within the City and adequately served by existing or planned services and infrastructure such as street access, sewer connections, water connections, and other utilities.

Environmental Clearance

- J) Planning staff conducted an environmental review (Environmental Review #23-18) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) is being recommended (Attachment G of Staff Report #23-515).