

CITY OF MERCED
Planning Commission

Resolution #4107

WHEREAS, the Merced City Planning Commission at its regular meeting of March 22, 2023, held a public hearing and considered **Conditional Use Permit #1270**, submitted by Hamid Yahya, property owner. The application involves a request to establish a food truck parking area to allow two food trucks to operate within a parking lot located at 1150 Martin Luther King Jr. Way. The subject site is generally located at the southeast corner of W. 12th Street and Martin Luther King Jr. Way, within a General Commercial (C-G) zone. Said property being more particularly described as Parcels 11-16 of Block 279, as shown on that certain map entitled “Supplemental Map to Town of Merced” recorded in Volume 2, Page 12 of Merced County Records; also known as Assessor’s Parcel Numbers (APNs) 031-334-015; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J (Exhibit B) of Staff Report #23-253; 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 #23-04, and approve Conditional Use Permit #1270, 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 #4107

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March 22, 2023

Adopted this 22nd day of March 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 #4107
Conditional Use Permit #1270

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) - Attachment C of Staff Report #23-253, 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in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.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. This approval shall replace the existing Conditional Use Permit (CUP) #879 for the fixed-location food vendor use at this location.
4. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, 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 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.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. Any missing or damaged structures on the property shall be installed/repaired by the Applicant and/or property owner to meet City and State Code standards.
9. Any required improvements shall be made prior to food trucks beginning to operate on the site.
10. The applicant and all participating food truck vendors onsite shall comply with all City of Merced business licensing requirements and with all requirements of the Merced County Environmental Health Department. The applicant shall be responsible for ensuring that all food truck vendors meet this requirement.
11. At least two trash receptacles per food truck shall be provided while food is being served. The site and the immediate surrounding area shall be maintained free of all debris and trash generated from this use.
12. In the event that an outdoor seating area is proposed, any permanent trash receptacles placed within the outdoor seating area shall be of the tamperproof variety. The Applicant shall work with the City Refuse Department to determine the proper location for a trash enclosure and if a recycling container will be required to comply with AB 341.
13. All signing shall be contained on the food trucks. No A-frame signs, banners, inflatable signs, feather signs, pennant signs, flags, or other moving or portable signs shall be permitted for this use anywhere onsite.

A temporary banner permit shall be obtained prior to installing any temporary signs.

14. This approval allows for the current food truck hours of operation permitted through Conditional Use Permit #879 of 10:00 a.m. to 9:00 p.m., seven days a week to be maintained under Conditional Use Permit #1270. If the applicant wishes to extend or modify the business hours in the future, they must obtain approval from the Director of Development Services and the Police Chief, or be referred back to the Planning Commission for action, if deemed necessary by the Director of Development Services.
15. If the business is open after dark, lights shall be provided on the vehicle or on the property that are sufficient to light the vehicle and at least a 50-foot radius around the vehicle. If lights are not provided, the business shall close at sundown.
16. Disposal of waste products shall be limited to a Merced County Environmental Health Department approved commissary or alternative approved facility.
17. The applicant shall ensure that all food truck vendors onsite comply with the Water Quality Control Division's (WQCD) Best Management Practices regarding the disposal of cooking grease and proper cleaning of kitchen equipment, as shown on Attachment D of Staff Report #23-253, or as otherwise required by the WQCD.
18. If problems arise as a result of this use that may require excessive Police Department service calls to the site, in the opinion of the Police Chief, or within the immediate area including, but not limited to, excessive harassment, malicious property damage, lewd and/or disorderly conduct, this approval may be subject to review and revocation by the City of Merced.
19. In the future, if there are excessive calls for police assistance, the Police Chief may require the applicant to install exterior video surveillance cameras. Any video related to criminal investigations must be accessible immediately for viewing by the Merced Police Department or any other law enforcement agency. A recorded copy of surveillance video, requested in connection with a criminal investigation, must be reasonably accessible and available within 24 hours when requested by law enforcement. The business owner is responsible for maintaining the video surveillance equipment in an operable manner at all times.

20. Food trucks shall be oriented in a manner that allows room for customers to gather without being in danger of collisions from vehicles entering/exiting the site. The food trucks shall not block the driving aisles or access to the alley.
21. It shall be the applicant's responsibility to ensure all customers park in an orderly fashion and do not block the driveway entrances or interfere with other customers driving through the site to access the Merced Food Center.
22. The applicant shall comply with all regulations found in Merced Municipal Code Section 20.44.020 - Food Trucks in Fixed Locations, except as modified by these conditions.
23. The applicant shall provide parking at a ratio of 2 parking stalls per food truck onsite or, if seating will be provided, 1 parking stall per every 2.5 seats, whichever number is greater. Any new parking spaces shall be designed to meet Zoning requirements and the City's Engineering Standards.
24. Food truck activities shall in no way interfere with the operation of nearby businesses, including noise, litter, loitering, and traffic circulation. Public safety must be a high priority.
25. Food truck business owner(s) shall ensure that restroom facilities are available for the employees that meet the Merced County Environmental Health Department's requirements and distance from the business operation. Facilities that are classified as portable toilets shall not be allowed.
26. During hours of operation, food truck employees shall have access to a cell phone (either their own or one provided by the business owner) in case of emergencies.
27. The sale of alcohol by any food truck is prohibited.
28. Minor adjustments to the site plan (i.e. the addition of an outdoor seating area or the addition of more food trucks) may be reviewed and approved by the Director of Development Services, or if deemed necessary, be referred to the Planning Commission.
29. Any music (live or played over outdoor speakers) shall be kept to a minimum noise level so as not to travel outside the immediate area and disturb the surrounding businesses. Music may be played anytime between the hours of 10:00 a.m. and 9:00 p.m. daily.

30. Any outdoor heating units or large tents used onsite shall be listed and approved by the Fire Department.

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**Findings and Considerations
Planning Commission Resolution #4107
Conditional Use Permit #1270**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

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

Traffic/Circulation

- B) The proposed site plan shows both food trucks located on the lot. One truck is located at the northwest corner of the lot with vehicle access to the right of the truck, off of Martin Luther King Jr. Way; the second truck shall be located at the north west corner of the lot with vehicle access to the south of the truck, off of W. 12th Street. Any addition of a seating area (if applicable) shall be reviewed by the Director of Development Services (Condition #28 of Staff Report #23-253). The proposed trucks shall be oriented in a manner that does not block any driving aisles and provides ample space for customers to gather around the food trucks without backing into traffic.

Parking

- C) Parking for the food trucks shall be provided at a ratio of 2 parking stalls per food truck or 1 parking stall per every 2.5 outdoor seats, whichever number is greater (Condition #23 of Staff Report #23-253). The applicant is not currently proposing tables and chairs. This approval is for two (2) trucks, at 2 spaces per truck, the requirement would be between 4 parking spaces. Parking requirements would be reviewed by Planning staff as food truck vendors request business license approval to sell within the subject site.

Public Improvements/City Services

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

Site Design

- E) The subject site includes an existing business, Merced Food Center; the operation of the proposed trucks shall not interfere with customers going

to the Merced Food Center (Condition #21 of Staff Report #23-253). Vehicle access is available from Martin Luther King Jr. Way and W. 12th Street.

Neighborhood Impact/Interference

- F) The subject site is surrounded by a variety of commercial uses. Surrounding uses to the north, south, west are General Commercial zones; properties to the east are within a high-density residential zoning district. Updates made to the Zoning Ordinance, effective October 2022, have removed high-density residential from the Zoning Ordinance Table 20.32-1 *Minor Use Permit Required* excluding this zone from needing special permit requirements for projects proposed near to existing land uses that might be negatively impacted by the new use.

Signage

- G) Food trucks are not allowed any signs other than what is provided on the vehicle itself. Condition #13 of Staff Report #23-253 prohibits the use of any A-frame signs, feather signs, pennants, or other freestanding signs.

Truck Details/Operation

- H) The applicant has proposed the operation of two food trucks at this site. Food trucks shall be standard in appearance and size and meet the requirements of the Merced County Environmental Health Department. Trash receptacles would be provided to collect the disposable plates, eating utensils, aluminum foil, and paper bags that are typically used to serve their meals (Conditions #10 and #11 of Staff Report #23-253). The sale of alcohol is prohibited (Condition #27 of Staff Report #23-253) by any food truck. The applicant has not proposed an area for tables and seating.

Employee restrooms shall be made available within a 200-foot-distance of the site as required by the Merced County Health Department and agreed upon by the property owner (Condition #25 of Staff Report #23-253). Disposal of waste products shall be limited to a Merced County Environmental Health Department approved commissary or alternative approved facility (Condition #16 of Staff Report #23-253). The applicant shall comply with the Water Quality Control Division's (WQCD) Best Management Practices regarding the disposal of cooking grease and proper cleaning of kitchen equipment, as shown at Attachment D of Staff

Report #23-253, or as otherwise required by the WQCD (Condition #17 of Staff Report #23-253).

The existing truck that is currently operating at this location under Conditional Use Permit (CUP) #879 as a fixed-location food vendor will be absorbed under this approval and conditions within this approval will override the approval of CUP #879, with the exception of the hours of operation previously permitted (Condition #14 of Staff Report #23-253).

Conditional Use Permit Findings

- I) A Conditional Use Permit is required to allow a mobile food vendor parking lot area within a commercial district per Merced Municipal Code (MMC) Section 20.44.020 Food Trucks in Fixed Locations. 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 criterion per MMC 20.68.020 (E) “Findings for Approval for Conditional Use Permits.”

MMC 20.68.020 (E) Findings for Approval.

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

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

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

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

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

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

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

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

Environmental Clearance

- J) Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e. no further environmental review is needed) is being recommended (Attachment E of Staff Report #23-253).