

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

**MINUTES**

Merced City Council Chambers  
Wednesday, December 9, 2015

Vice Chairperson BAKER 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, \*Robert Dylina, Peter Padilla, \*Jill McLeod, and Vice Chairperson Bill Baker

\*Commissioners Dylina and McLeod arrived at 7:08 p.m.

Commissioners Absent: Chairperson Colby (unexcused)

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

**1. APPROVAL OF AGENDA**

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

**2. MINUTES**

M/S SMOOT-SMITH, and carried by unanimous voice vote (one absent), to approve the Minutes of November 18, 2015, as submitted.

**3. COMMUNICATIONS**

None.

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4. **ITEMS**

- 4.1 Adoption of Resolution of Denial of Conditional Use Permit #1206, initiated by Sound Life International Ministries on behalf of the Merced Lodging Corporation, property owners. This application involves a request to convert an existing 100-unit motel to a worship center and a rehabilitation facility with up to 200 beds at 1213 V Street, generally located 150 feet south of the intersection at Highway 140 and V Street, within a Thoroughfare Commercial (C-T) zone. (Continued from November 18, 2015)

Commissioner PADILLA recused himself due to the fact that he had previously done business with the applicant and left the dais.

Planner MENDOZA-GONZALEZ reviewed the report on this item. He explained that there had been no changes in the project since the meeting on November 18, 2015. Planner MENDOZA-GONZALEZ also explained that staff had prepared a resolution for denial based on the Commission's direction at the last meeting. For further information, refer to Staff Report #15-22-Addendum.

There was no one present wishing to speak regarding the project; therefore, public testimony was opened and closed at 7:12 p.m.

M/S SMITH-SMOOT, deny and carried by the following vote, to deny Environmental Review #15-30, and deny Conditional Use Permit #1206, subject to the Findings set forth in Staff Report #15-22 Addendum (RESOLUTION #3058).

AYES: Commissioners Smoot, Smith, McLeod, Dylina, and Vice Chairperson Baker

NOES: None

ABSENT: Commissioner Colby

ABSTAIN: Commissioner Padilla

Commissioner PADILLA returned to the dais.

- 4.2 Zoning Ordinance Amendment #15-01, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would add Chapter 20.84, “Medical Marijuana and Cultivation” to the Merced Municipal Code prohibiting all commercial medical marijuana/cannabis uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced and prohibiting the cultivation of any amount of marijuana/cannabis for medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced.

Planning Manager ESPINOSA reviewed the report on this item. For further information, refer to Staff Report #15-21.

Public testimony was opened at 7:20 p.m.

No one spoke in favor of the adoption of the proposed ordinance.

Speakers from the Audience in Opposition:

CHRISTINE MERUSEL (aka: Sister Kate) of the Sisters of the Valley, Merced, who provided a handout to the Commission regarding medical marijuana products sold online and reviews of these products.

CHARLES VEILLEAX, Merced

LANDAN DEMRO, Merced

JUSTIN VIGARDT, Snelling

ROLAND ROJAS, Merced

SUSAN BOUSCARA, Merced

EMERY SILBERMAN, Merced, who presented a PowerPoint presentation entitled “Defense of Medical Marijuana in the County of Merced.”

KEVIN BAUER, Merced, who presented a PowerPoint presentation regarding the chemical traits of cannabis and the repercussions of not allowing medical marijuana within the City of Merced.

CHRIS GONZALEZ, Merced

AARON JENKINS, II, Merced

JO JENKINS, Merced

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LYNDSEY SEXTON, Empire, CA  
DR. LAKISHA JENKINS, Merced  
NATHAN LOPEZ, Merced  
DIANA WESTMORELAND, Merced  
DWIGHT LARKS, Merced  
SHARON HOFFMAN, Mariposa

Public Testimony was completed at 8:32 p.m.

There was a discussion among the Commissioners regarding modifying the ordinance to provide regulations on the use of medical marijuana rather than prohibiting it. They also discussed the timing required for the adoption of the ordinance due to the state regulations (Assembly Bill 243) being enacted by March 1, 2016.

M/S PADILLA-SMOOT, to recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #15-33, and approval of Zoning Ordinance Amendment #15-01, subject to modifications to the ordinance to allow medical marijuana dispensaries in certain commercial zones (they deferred to staff to determine which zones), allow deliveries to begin at dispensaries within those commercial zones and to end in any zone within the City, and allow the cultivation of up to 12 medical marijuana plants for personal use (equivalent to Merced County's regulations), with no commercial cultivation of marijuana (RESOLUTION #3059).

There was further discussion among the Commission regarding the types of regulations and dispensaries to be allowed.

Commissioner SMOOT withdrew his second to the motion due to concerns with the possibility of walk-up dispensaries being allowed. After further discussion, Commissioner SMOOT, reinstated his second to Commissioner PADILLA's motion.

The motion carried by the following vote:

AYES: Commissioners Smoot, Smith, McLeod, Dylina, Padilla,  
and Vice Chairperson Baker  
NOES: None

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ABSENT: Commissioner Colby

ABSTAIN: None

4.3 Cancellation of December 23, 2015, Planning Commission Meeting due to the Holidays

M/S PADILLA-SMOOT, and carried by the following vote, to cancel the Planning Commission meeting of December 23, 2015.

AYES: Commissioners Smoot, Smith, McLeod, Dylina, Padilla, and Vice Chairperson Baker

NOES: None

ABSENT: Commissioner Colby

ABSTAIN: None

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

6. ADJOURNMENT

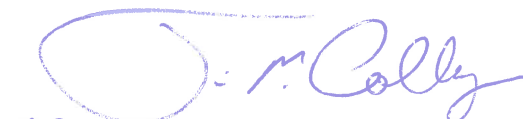
There being no further business, Vice Chairperson BAKER adjourned the meeting at 9:18 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



BILL BAKER, Vice Chairperson  
Merced City Planning Commission

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

**Resolution #3058**

**WHEREAS**, the Merced City Planning Commission at its regular meetings of November 18 and December 9, 2015, held a public hearing and considered **Conditional Use Permit #1206**, initiated by Sound Life International Ministries on behalf of the Merced Lodging Corporation, property owners. This application involves a request to convert an existing 100-unit motel to a worship center and a rehabilitation facility with up to 200 beds at 1213 V Street, generally located 150 feet south of the intersection at Highway 140 and V Street, within a Thoroughfare Commercial (C-T) zone; also known as Assessor's Parcel No. 031-271-017; and,

**WHEREAS**, the Merced City Planning Commission hereby adopts modified Findings A, F, and J of Staff Report #15-22 and additional Findings K through O as follows (Staff Report #15-22 – Addendum):

**General Plan/Zoning Compliance and Policies Related to This Application**

- A) The subject site has a zoning designation of Thoroughfare Commercial (C-T) and a General Plan designation of Thoroughfare Commercial (CT). The project complies with the C-T zone if a Conditional Use Permit is approved. However, as shown below, the project conflicts with the following land use policies from the General Plan:

**Land Use Policy L-1.4:**

“Conserve residential areas that are threatened by blighting influences.”

**Land Use Policy L-1.5:**

“Protect existing neighborhoods from incompatible developments.”

**Neighborhood Impact/Interface**

- F) The project site is surrounded by both commercial and residential uses. There is a commercial plaza to the north of the subject site containing a

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grocery store, a hair salon, and an automobile insurance company. There are single-family residential properties to the south (across 12<sup>th</sup> Street) and to the west (across W Street) of the subject site. There are fast food restaurants and other general retail uses to the east of the subject site. Gracey Elementary School is located approximately three blocks southwest of the subject site (1,100 feet away).

The applicant hosted two neighborhood meetings prior to the public hearing, inviting residents who live within three-hundred feet of the subject site. One meeting was held at the Merced Salvation Army and the other at Stephen Leonard Park, with fifteen to thirty people in attendance at each meeting. City staff did not attend those meetings; however, staff did receive several questions and comments from residents who were in attendance. The most common questions and concerns with this project were in regards to blight, increase in crime rates, and decrease in property values for both residential and commercial properties. Subsequent to the staff report being distributed, staff received a letter and an e-mail from residents in opposition to the project (Attachment B). In addition, staff received phone calls from representatives from the Merced City School District who were in opposition to the project because of reasons concerning student safety (as described in Finding L). One additional letter was received at the Planning Commission meeting (also see Attachment B).

### **Environmental Clearance**

- J) Planning staff conducted an environmental review (Environmental Review #15-30) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA). Because the Planning Commission is electing to deny CUP #1206 (based on the Findings in this staff report), they are also electing to deny Environmental Review #15-30 (Categorical Exemption).

### **Additional Findings/Consideration for Denial:**

- K) During the November 18, 2015, Planning Commission hearing, the Planning Commission received testimony from a representative from the Merced Police Department who explained that past experiences with similar projects in Merced (i.e. a homeless support facility at 14<sup>th</sup> Street

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and R Street that is no longer open) have placed significant demands on City Police resources and led to increased crime rates in the area. Refer to Finding G and Attachment D from Staff Report #15-22 for information about crime rates provided by the Police Department.

- L) During the public hearing, the Planning Commission received testimony from representatives from the Merced City School District who were opposed to this project because of concerns regarding student safety. They explained that both Gracey Elementary School and Margaret Sheehy Elementary School are located within a half-mile radius of the subject site. Many of their students walk near or along the subject site to get to and from school, because bus services are provided only to students who reside outside a one-mile radius from school property or live across from a major barrier (such as a highway). The testimony indicated that students may be harmed or harassed by rehabilitation participants who relapse, leave the facility, or wander throughout the neighborhood.
- M) During the public hearing, the Planning Commission received testimony from business owners from the neighborhood who were opposed to this project because it could have significant economic impacts on their businesses. They were concerned that rehabilitation participants will wander from the rehabilitation facility and loiter on their property, discouraging customers from entering the site and conducting business. These comments were based on previous experiences with people who have drug dependencies or who are homeless within the neighborhood.
- N) During the public hearing, the Planning Commission received testimony from several residents from the neighborhood who were opposed to this project. They expressed concerns regarding blight and increased crime rates. They were also concerned about the program not being able to control their clients if they drop-out of the program and were concerned they would stay in the community instead of going back to their original city of residence. They also expressed concerns about the lack of fingerprinting as part of the background checks and incompatibility between the program and the existing land uses (i.e. a liquor store is located across the street) in the area.



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- O) Although the Planning Commission felt that the goals of the proposed project were commendable and that the proposed project could work at an alternative location, there are significant factors that make the proposed project incompatible with the existing neighborhood, as shown in Findings A, F, K, L, M, and N. Therefore, the Planning Commission is denying Conditional Use Permit #1206 based on the Findings in this staff report.

**NOW THEREFORE**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby deny Environmental Review #15-30 and Conditional Use Permit #1206.

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

AYES: Commissioners Smoot, Smith, McLeod, Dylina, and Acting Chairperson Baker

NOES: None

ABSENT: Commissioner Colby

ABSTAIN: Commissioner Padilla

PLANNING COMMISSION RESOLUTION # 3058

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Adopted this 9<sup>th</sup> day of December 2015

  
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Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

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

**Resolution #3059**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of December 9, 2015, held a public hearing and considered **Zoning Ordinance Amendment #15-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would add Chapter 20.84, “Medical Marijuana and Cultivation” to the Merced Municipal Code prohibiting all commercial medical marijuana/cannabis uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced and prohibiting the cultivation of any amount of marijuana/cannabis for medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced; and,

**WHEREAS**, the Merced City Planning Commission considered Findings A through E of Staff Report #15-23; 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 #15-33, and approval of Zoning Ordinance Amendment #15-01, modified as follows:

Allow medical marijuana dispensaries in certain commercial zones (they deferred to staff to determine which zones), allow deliveries to begin at dispensaries within those commercial zones and to end in any zone within the City, and allow the cultivation of up to 12 medical marijuana plants for personal use (equivalent to Merced County’s regulations), with no commercial cultivation of marijuana.

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

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

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Adopted this 9<sup>th</sup> day of December 2015

  
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Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
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Secretary