



CITY OF MERCED

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

Minutes Planning Commission

Wednesday, January 20, 2021

7:00 PM

A. CALL TO ORDER

Chairperson HARRIS called the Regular Meeting to order at 7:00 PM

Clerk's note: The meeting was held via teleconference per Governor Newsom's Executive Order N-29-20 and roll call votes were taken.

A.1. Moment of Silence

A.2. Pledge of Allegiance to the Flag

Commissioner DELGADILLO led the Pledge of Allegiance to the Flag.

B. ROLL CALL

Clerk's note: The Planning Commission has 1 vacancy at this time.

Present: 6 - Chairperson Michael Harris, Stephanie Butticci, Robert Dylina, Dorothea White, Jose Delgadillo, and Vice Chair Mary Camper

Absent: 0

C. ORAL COMMUNICATIONS

There were no public comments.

D. CONSENT CALENDAR

D.1 **SUBJECT:** Planning Commission Minutes of January 6, 2021

ACTION:

Approving and filing the Planning Commission Minutes of January 6, 2021

A motion was made by Member White, seconded by Member Delgadillo, to approve the Consent Calendar. The motion carried by the following vote:

Aye: 6 - Harris
Butticci
Dylina
White
Delgadillo
Camper

No: 0

Absent: 0

D.2

SUBJECT: Vacation #21-01 - initiated by Valley Children's Hospital to abandon a 32-foot-wide portion of roadway, containing approximately 19,627.87 square feet of land, generally located approximately 330 feet north of Yosemite Avenue, between Mansionette Drive and Sandpiper Avenue (extended).

ACTION FINDING:

- 1) The proposed Vacation is consistent with the General Plan.

SUMMARY

This request is to vacate a 32-foot-wide strip of right-of-way, containing approximately 19,627.87 square feet of land, generally located approximately 330 feet north of Yosemite Avenue between Mansionette Drive and Sandpiper Avenue (extended). City staff has reviewed the need for this right-of-way and determined that a road in this location is not necessary.

RECOMMENDATION

Planning staff recommends that the Planning Commission adopt a Finding that the proposed Vacation is consistent with the General Plan.

A motion was made by Member White, seconded by Member Delgadillo, to approve the Consent Calendar. The motion carried by the following vote:

Aye: 6 - Harris
Butticci
Dylina
White
Delgadillo
Camper

No: 0

Absent: 0

E. PUBLIC HEARINGS AND ACTION ITEMS

E.1

SUBJECT: Conditional Use Permit #1251, initiated by Tait & Associates, on behalf of Yosemite & G, LLC, property owner. This application involves a request to sell beer, wine, and distilled spirits for off-site consumption for a new gas station (7-Eleven), generally located at the northeast corner of Yosemite Avenue and G Street (3600 G Street), within a zoning classification of Planned Development (P-D) #72, and a General Plan designation of Neighborhood Commercial (CN). **PUBLIC HEARING**

ACTION: Approve/Disapprove/Modify
Environmental Review #20-40 (CEQA Section 15162 Findings)
Conditional Use Permit #1251

SUMMARY

7-Eleven is requesting approval to sell beer, wine, and distilled spirits for off-site consumption at a proposed gas station and convenience mart on the Yosemite Crossing site (3600 G Street). The subject site is a vacant parcel located at the northeast corner of Yosemite Avenue and G Street. A conditional use permit is required for any business that wants to sell alcoholic beverages for off-site consumption in a building of 20,000 square feet or less. Staff is recommending approval of this application subject to conditions.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #20-40 [CEQA Section 15162 Findings] and Conditional Use Permit #1251 including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B.

Principal Planner HREN reviewed the report on this item. For further information, refer to Staff Report #20-769. (Members of the public were given the opportunity to leave email and voicemail messages as well prior to the meeting, none were received).

Public testimony was opened at 7:13 PM

Speakers Via Teleconference in Favor:

Chandra Miehe, Tait & Associates, Rancho Cordova

Karly Zacher, 7-Eleven, Merced

There were no speakers in opposition to the project.

Public testimony was closed at 7:17 PM

A motion was made by Vice Chair Camper, seconded by Member White, to find that the previous Environmental Review (Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 for Planned Development #72) remains sufficient and no further documentation is required (CEQA Section 15162 Findings) and approve Conditional Use Permit #1251, subject to the Findings and Conditions set forth in Staff Report #20-796 (RESOLUTION #4055). The motion carried by the following vote:

Aye: 6 - Harris
Butticci
Dylina
White
Delgadillo
Camper

No: 0

Absent: 0

E.2

SUBJECT: General Plan Amendment #20-03, initiated by the City of Merced. This application involves a request to amend Table 3.2, Standards of Population Density and Building Intensity, of the Land Use Element of the *Merced Vision 2030 General Plan* by adding standards for population density to the Regional/Community Commercial (RC), Neighborhood Commercial (CN), and Commercial/Professional Office (CO) land use categories for mixed use and residential developments. References to new Zoning Districts established after the 2012 adoption of the General Plan will also be added to the Table.**PUBLIC HEARING**

ACTION Item to be Tabled; No Action Required

SUMMARY

General Plan Amendment #20-03 was continued from the December 9, 2020, Planning Commission meeting. Staff has determined that this item will be tabled and brought back at a future date.

RECOMMENDATION

The Item is being tabled; no action is required.

Planning Manager ESPINOSA informed the Planning Commission that no action is required, the item will be tabled and brought back at a future date.

General Plan Amendment #20-03 is to be tabled.

E.3

SUBJECT: Zoning Ordinance Amendment #20-01, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.10 ("Commercial Zoning Districts"). This amendment would modify Table 20.10-1 ("Permitted Land Uses in the Commercial Zoning Districts") by expanding the list of permitted uses and reducing the amount of floor area devoted to the sale of groceries in the Shopping Center Commercial (C-SC) zone; adding Breweries, Wineries, and Distilleries to the list of permitted uses in various Commercial zones; allowing food trucks in the City Center area of the Regional/Central Commercial Zone (C-C); and changing the level of review required for Personal Services in various commercial zones. ***PUBLIC HEARING**

ACTION PLANNING COMMISSION:

Recommendation to City Council

Environmental Review #20-33 (*Categorical Exemption*)

Zoning Ordinance Amendment #20-01

CITY COUNCIL:

Approve/Disapprove/Modify

Environmental Review #20-33 (*Categorical Exemption*)

Zoning Ordinance Amendment #20-01

SUMMARY

This Zoning Ordinance Amendment would make several changes to the "Commercial Zoning District" section, including expanding the list of permitted uses and reducing the amount of floor area devoted to the sale of groceries in the Shopping Center Commercial (C-SC) zone; adding Breweries, Wineries, and Distilleries to the list of permitted uses in various Commercial zones; allowing food trucks in the City Center area of the Regional/Central Commercial Zone (C-C); and changing the level of review required for Personal Services in various commercial zones. Staff is recommending approval.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval to the City Council of Environmental Review #20-33 [*Categorical Exemption*] and Zoning Ordinance Amendment #20-01 (including the

adoption of the Draft Resolution at Attachment A) subject to the findings/considerations in Exhibit A of the Draft Resolution.

Planning Manager ESPINIOSA reviewed the report on this item. For further information, refer to Staff Report #20-798. Staff also received one public comment from ROD BRAWLEY in opposition to the project prior to the meeting. The public comment was provided to the Planning Commission via email. (Members of the public were given the opportunity to leave email and voicemail messages as well prior to the meeting).

Public testimony was opened at 8:00 PM

There were no speakers in favor of or in opposition to the project.

Public testimony was closed at 8:01 PM

A motion was made by Commissioner DELGADILLO to continue Environmental Review #20-33 and Zoning Ordinance Amendment #20-01. The motion failed due to lack of second.

A motion was made by Member White, seconded by Member Delgadillo, to recommend to the City Council adoption of a Categorical Exemption regarding Environmental Review #20-33 and approval of Zoning Ordinance Amendment #20-01, subject to the Findings and the draft Ordinance provided in Staff Report #20-798 (RESOLUTION #4057). The motion carried by the following vote:

Aye: 6 - Harris
Butticci
Dylina
White
Delgadillo
Camper

No: 0

Absent: 0

E.4

SUBJECT: Zoning Ordinance Amendment #20-02, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.42 ("Accessory Dwelling Units"). This amendment would modify the City's requirements for "accessory dwelling units" (ADUs) to meet the modified requirements of State Law in regards to minimum lot sizes, owner-occupancy requirements, maximum size of an ADU, application review times, parking requirements, the charging of impact fees, the sale of ADUs, "junior ADUs," and other requirements of State Law. **PUBLIC HEARING**

ACTION PLANNING COMMISSION:

Recommendation to City Council

Environmental Review #20-34 (*Categorical Exemption*)

Zoning Ordinance Amendment #20-02

CITY COUNCIL:

Approve/Disapprove/Modify

Environmental Review #20-34 (*Categorical Exemption*)

Zoning Ordinance Amendment #20-02

SUMMARY

This Zoning Ordinance Amendment would modify the City's requirements for "accessory dwelling units" (ADUs) to meet the modified requirements of State Law in regards to minimum lot sizes, owner-occupancy requirements, maximum size of an ADU, application review times, parking requirements, the charging of impact fees, the sale of ADUs, "junior ADUs," and other requirements of State Law, which have gone into effect in 2020 and 2021. Staff is recommending approval.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval to the City Council of Environmental Review #20-34 [*Categorical Exemption*] and Zoning Ordinance Amendment #20-02 (including the adoption of the Draft Resolution at Attachment A) subject to the findings/considerations in Exhibit A of the Draft Resolution.

Clerk's Note: The Planning Commission meeting recessed from 8:25 to 8:30 PM

Planning Manager ESPINOSA reviewed the report on this item. For further information, refer to Staff Report #20-799. (Members of the public were given the opportunity to leave email and voicemail messages as well prior to the meeting, none were received).

Public testimony was opened at 8:54 PM

There were no speakers in favor of or in opposition to the project.

Public testimony was closed at 8:55 PM

A motion was made by Member White, seconded by Member Delgadillo, to recommend to the City Council adoption of a Categorical Exemption regarding Environmental Review #20-34 and approval of Zoning Ordinance Amendment #20-02, subject to the Findings and the draft Ordinance provided in Staff Report

#20-799 (RESOLUTION #4058). The motion carried by the following vote:

Aye: 6 - Harris
Butticci
Dylina
White
Delgadillo
Camper

No: 0

Absent: 0

F INFORMATION ITEMS

F.1 **SUBJECT:** Report by Planning Manager of Upcoming Agenda Items

ACTION

Information only.

Planning Manager ESPINOSA went over items for the next several Planning Commission meetings.

F.2 **SUBJECT:** Calendar of Meetings/Events

Jan. 19	City Council, 6:00 p.m. (By Teleconference)
20	Planning Commission, 7:00 p.m. (By Teleconference)
Feb. 1	City Council, 6:00 p.m. (By Teleconference)
3	Planning Commission, 7:00 p.m. (By Teleconference)
16	City Council, 6:00 p.m. (May be by Teleconference)
17	Planning Commission, 7:00 p.m. (By Teleconference)
23	Bicycle/Pedestrian Advisory Commission, 4:00 p.m. (By Teleconference)
Mar. 1	City Council, 6:00 p.m. (Teleconference)
3	Planning Commission, 7:00 p.m. (By Teleconference)
15	City Council, 6:00 p.m. (May be by Teleconference)
17	Planning Commission, 7:00 p.m. (By Teleconference)

G. ADJOURNMENT

Clerk's note: The Regular Meeting adjourned at 9:08 PM

A motion was made by Member Dylina, seconded by Member White, to adjourn the Regular Meeting. The motion carried by the following vote:

Aye: 6 - Harris
Butticci
Dylina
White
Delgadillo
Camper

No: 0

Absent: 0

CITY OF MERCED
Planning Commission

Resolution #4055

WHEREAS, the Merced City Planning Commission at its regular meeting (held via teleconference) of January 20, 2021, held a public hearing and considered **Conditional Use Permit #1251**, submitted by Tait & Associates, on behalf of Yosemite & G, LLC, property owner. This application involves a request to sell beer, wine, and distilled spirits for off-site consumption for a new gas station (7-Eleven), generally located at the northeast corner of Yosemite Avenue and G Street (3600 G Street), within a zoning classification of Planned Development (P-D) #72, and a General Plan designation of Neighborhood Commercial (CN); said property being more particularly described as “Remainder C” of Final Map No. 5233, amended map for Mansionette Estates Unit 1, according to the map filed July 13, 2000 in Book 52, Pages 31, 32, and 33 of Official Plats, Merced Country Records; also known as Assessor’s Parcel Number (APN) 231-040-004 and APN 231-040-005.

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through F (Exhibit B) of Staff Report #20-796; 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 find that the previous environmental review (Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 for Planned Development #72) remains sufficient and no further documentation is required (CEQA Section 15162 Findings) and approve Conditional Use Permit #1251, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

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

AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, White, and Chairperson Harris

NOES: None

ABSENT: None

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4055

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January 20, 2021

Adopted this 20th day of January, 2021

Michael Harris

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 #4055
Conditional Use Permit #1251

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment E of Staff Report #20-796, 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 Project shall comply with the conditions set forth in General Plan Amendment #19-03, Site Utilization Plan Revision #3 to Planned Development #72, and Conditional Use Permit #1241 for a master sign program, all previously approved for this development.
4. 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. 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.

5. 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.
6. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
7. All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.
8. The premises shall remain clean and free of debris and graffiti at all times. Any damaged materials shall be replaced by matching materials.
9. 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.
10. No beer shall be displayed or stored outside of the cooler areas.
11. No display or sale of beer or wine shall be made from an ice tub.
12. Employees shall be at least 21 years old to sell alcohol.
13. 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.
14. The area within the convenience market dedicated to the display and sale of beer, wine, and distilled spirits shall not exceed the amount shown at Attachment E of Staff Report #20-796.
15. The City reserves the right to periodically review the area for potential problems. If in the opinion of the Police Chief, problems (on-site or

within the immediate area) 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.

16. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine cooler containers shall be sold as part of a pack or carton. However, wine bottles or cartons of sizes 750 ml or larger may be sold as single-serving containers.
17. No alcohol shall be displayed within five feet of the cash register or the front door.
18. No advertisement of alcoholic beverages shall be displayed on motor fuel islands, in landscaped areas, or outside the buildings or windows.
19. No self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
20. No sale of alcoholic beverages shall be made from a drive-up window.
21. The business shall comply with all applicable requirements from the Merced County Health Department.
22. 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.
23. A permanent tamper-proof outdoor trash receptacle shall be installed near the main entrance to the convenience market.
24. A Finding of Public Convenience or Necessity must be obtained from the City Council for this use.
25. In the site's current configuration, the sale of tobacco is prohibited per MMC 20.44.160, as the subject site is currently located within 1,000 feet of a school. Should the in-process Final Map Application be approved, if the distance of the newly created parcel which this project is sited on is greater than 1,000 feet from any school, not including Merced College, the sale of tobacco would no longer be prohibited.

26. The signage as currently proposed is not approved. All signage shall comply with the Master Sign Program for this site approved in Conditional Use Permit #1241 and the City's Sign Ordinance.

**Findings and Considerations
Planning Commission Resolution #4055
Conditional Use Permit #1251**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Neighborhood Commercial (CN) and the zoning classification of Planned Development (P-D) #72 with approval of a Conditional Use Permit.

Alcohol Sales

- B) This request requires a Conditional Use Permit because 7-Eleven will be less than 20,000 square feet in size. In order for the Planning Commission to approve or deny a request for the sale of alcoholic beverages for off-site consumption, it must consider the following criteria and make findings to support or deny each criterion 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 500-foot radius of the site.

Finding #1:

The subject site is located within Alcoholic Beverage Control Census Tract #11.01. In checking with the State of California Alcoholic Beverage Control, this census tract is over concentrated with business selling alcohol as 5 licenses are allowed outright, but there are currently 10 active sites. The City Council will need to approve a Finding of Public Convenience or Necessity for this use (Condition #24 of Planning Commission Resolution #4055).

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:

The nearest residential uses (single-family homes) are located approximately 80 feet east of the subject site, across the proposed extension of Sandpiper Avenue. (Attachment B of Staff Report #20-796). The nearest sensitive use (besides residential properties) is Cruickshank Middle School, which is located approximately 960 feet away from the subject site with the main entrance to the school being

approximately 1,288 feet away from the subject site, at the northeast corner intersection of Dominican Drive and Mercy Avenue. The approved Vesting Tentative Subdivision Map and pending Final Map application would modify the site such that it sits on a parcel that is approximately 375 feet away from the residential properties to the east, approximately 1,800 feet from the property line of Cruickshank Middle School, and over 2,000 feet from the main entrance to the school building.

Criteria #3

The crime rate in the area of the proposed site with particular attention given to those crimes involving public intoxication, the illegal sale of narcotics, disturbing the peace, and disorderly conduct.

Finding #3:

Between December 1, 2019, and November 30, 2020, the Merced Police Department recorded 369 incidents within a 500-foot radius of the subject site. The table below shows the number of incidents within that area involving public intoxication, assaults, MMC violations, and narcotics violations (totaling 88 incidents during the 12-month period). As shown on the attached Incident Map (Attachment J of Staff Report #20-796), the majority of those incidents occurred at the intersection of Yosemite Avenue and G Street (most of which were traffic related incidents), or in the parking lot of the shopping center across Yosemite Avenue to the south. The number of incidents reported City-wide for the same time period was 72,743. Based on the total number of calls within the City, the 88 calls to this area equals 0.1% of the overall calls for service within the City.

Incidents and Cases Reported (December 1, 2019 – November 30, 2020)

Incident/Case Type	Number of Incidents
Public Intoxication	1
Assault	1
MMC*	35
Narcotics violations	1
Disturbance	46
Drunk Driver**	4

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

**MMC 20.44.010(B)(3) does not specify drunk driving as an item of particular attention, though it is similar enough to a listed item of particular attention, “public drunkenness”, that it is presented here for consideration.

Planning staff consulted with the Merced Police Department regarding alcohol sales at this location; the Police Department did not have any significant concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for off-site consumption. 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.

EXHIBIT B OF PLANNING COMMISSION RESOLUTION #4055

Neighborhood Impact/Interface

- C) The subject site is surrounded by retail uses to the south, Merced College to the west, vacant land and the Mercy Medical Center to the north, and residential uses to the east. Residential uses (single-family homes) are located 80 feet east of the subject site (Attachment B of Staff Report #20-796). The nearest sensitive use (besides residential properties) is Cruickshank Middle School, which is located approximately 960 feet away from the subject site with the main entrance to the school being approximately 1,288 feet away from the subject site, at the northeast corner intersection of Dominican Drive and Mercy Avenue. The approved Vesting Tentative Subdivision Map and pending Final Map application would modify the site such that it sits on a parcel that is approximately 375 feet away from the residential properties to the east, approximately 1,800 feet from the property line of Cruickshank Middle School, and over 2,000 feet from the main entrance to the school building. The subject site is surrounded by vacant parcels, arterial roads, and a proposed extension of Sandpiper Avenue. These barriers would reduce the impact that this development would have on the neighborhood. Given the context of the site, the approved Vesting Tentative Subdivision Map and the pending application for a Final Map which would increase the distance between the boundaries of the parcel on which the proposed activities will take place and surrounding/sensitive uses, staff believes that approval of this request should not have a significant impact in the surrounding area.

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 did not receive any comments from the community about this project.

Signage

- D) The applicant has proposed signage as part of their application. As proposed, the monument sign does not meet the criteria outlined in the approved master sign program, including dimensions, materials, and layout, for this site (Conditional Use Permit #1241). Additionally, the proposed illuminated window sign for an Automated Teller Machine is not one of the approved signs in the master sign program. Furthermore, the master sign program specifies a number of approved types, each of which includes channel lettering. Staff is not recommending approval of these signs as presented and all signage must comply with the approved master sign program. Staff is also recommending that certain restrictions regarding the advertisement of alcohol be included with this permit. Said restrictions would prohibit the advertisement of beer, wine, and distilled spirits on the building walls, windows, and in the parking lot (Conditions #18 and #19 of Planning Commission Resolution #4055). A formal request for permanent signage shall be reviewed by staff with a building permit application and shall require compliance with the North Merced Sign Ordinance.

Conditional Use Permit Findings

- E) In order for the Planning Commission to approve or deny a conditional use permit,

EXHIBIT B
OF PLANNING COMMISSION RESOLUTION #4055

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.*

The proposed project complies with the General Plan designation of Neighborhood Commercial (CN) and the zoning designation of Planned Development (P-D) #72 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 site plan for this site was approved as a part of General Plan Amendment #19-03 and Site Utilization Plan #3 to Planned Development #72 for the Yosemite Crossing Development in January 2020. The proposed use fits within the character and design of that site plan. Staff does not anticipate that the approval of this proposal would significantly change the character of the neighborhood or create any unusual circumstance for the surrounding area.

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

As shown under Finding B, 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 did not have any significant concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for off-site consumption. 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 subject site is properly located within the City and can be served by existing or planned services and infrastructure.

Environmental Clearance

- F) Planning staff has conducted an environmental review (Environmental Review #20-40) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends that the previous environmental review (Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 for Planned Development #72) remains sufficient and no further documentation is required (CEQA Section 15162 Findings) (Attachment I of Staff Report #20-796).

CITY OF MERCED
Planning Commission

Resolution #4057

WHEREAS, the Merced City Planning Commission at its regular meeting of January 20, 2021, held a public hearing via teleconference and considered **Zoning Ordinance Amendment #20-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.10 (“Commercial Zoning Districts”). This amendment would modify Table 20.10-1 (“Permitted Land Uses in the Commercial Zoning Districts”) by expanding the list of permitted uses and reducing the amount of floor area devoted to the sale of groceries in the Shopping Center Commercial (C-SC) zone; adding Breweries, Wineries, and Distilleries to the list of permitted uses in various Commercial zones; allowing food trucks in the City Center area of the Regional/Central Commercial Zone (C-C); and changing the level of review required for Personal Services in various commercial zones; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through G of Staff Report #20-798 (Exhibit A); 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 #20-33, and approval of Zoning Ordinance Amendment #20-01, as outlined in Exhibit B and subject to the Findings set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, White, and Chairperson Harris

NOES: None

ABSENT: None

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4057

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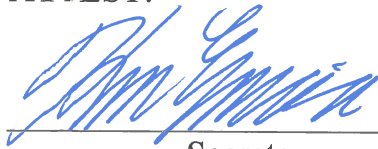
January 20, 2021

Adopted this 20th day of January 2021

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A –Findings/Considerations

Exhibit B—Draft Ordinance

Findings and Considerations
Planning Commission Resolution #4057
Zoning Ordinance Amendment #20-01

FINDINGS/CONSIDERATIONS:

General Plan Policies Related to This Application

- A) The proposed zoning ordinance amendment would make changes in response to streamlining efforts and direction received from the Downtown Steering Committee and Economic Development staff. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

Proposed Changes to MMC 20.10 (“Commercial Zoning Districts”)

- B) The proposed changes to MMC 20.10 (“Commercial Zoning Districts”) are proposed for various reasons as outlined in the Findings below. The changes are contained in the Draft Ordinance at Attachment B of Staff Report #20-798 and presented in the modified Chapter 20.10 at Attachment C of Staff Report #20-798. In general, the changes can be summarized as follows:
- 1) The addition of permitted land uses to the Commercial Shopping Center (C-SC) District as well as changing the amount of floor area devoted to grocery sales in the C-SC zone;
 - 2) Changing the level of review required for Personal Services in various commercial zones;
 - 3) Removing the prohibition against mobile food trucks in the City Center; and,
 - 4) Adding “Breweries, Distilleries, and Wineries” as a permitted land use in several commercial zones.

Proposed Changes to the Commercial Shopping Center (C-SC) Zoning District

- C) As described in the Background section of Staff Report #20-798, the Commercial Shopping Center (C-SC) District was created in 2012 to provide similar services to the Neighborhood Commercial (C-N) District, but at a larger scale and to attract a grocery store to the South Merced Area. The City subsequently rezoned a 6-acre parcel at the southeast corner of Childs Ave and Canal St, which was formerly owned by the Redevelopment Agency and is still the only parcel zoned C-SC in the City.

In 2018, the list of land uses were expanded in the C-SC zone in an effort to spur development of the Childs & Canal site by adding more profitable land uses to make it more financially feasible for investors while still retaining the requirement for a grocery store, devoting a minimum of 20,000 square feet of floor area to the sale of groceries. There was also an anonymous developer that was interested in the parcel. As a result, several uses, including community gardens, colleges and trade schools, indoor and outdoor commercial recreation, and drive-through sales, were added to the C-SC zone. Several land uses (gas stations, car washes, professional offices, and restaurants) were reduced from requiring a Conditional Use Permit (with a public

hearing before the Planning Commission) to only requiring a Site Plan Review permit (a staff level permit). However, that developer did not move forward with any plans for the site and the site has remained vacant.

The City's Economic Development Staff have continued to aggressively market the C-SC site and a new developer has recently expressed interest in developing the site. According to Economic Development Staff and the developer, expanding the allowed land uses and community services in the C-SC even further would make the site more attractive as will reducing the amount of floor area required for grocery sales from 20,000 square feet to 8,000 square feet. According to Economic Development Staff, many grocery retailers have reduced the size of their stores and are promoting such smaller prototypes for future developments. However, 8,000 square feet is still larger than most convenience store models that devote more of their floor area to alcohol sales. The City's expressed intent for the C-SC zone has always been to have a full-service grocery store, not just a convenience market.

The following changes to the Commercial Shopping Center (C-SC) Zone within Table 20.10-1 (Permitted Land Uses in the Commercial Zoning Districts) are proposed in the Draft Ordinance in Attachment B of Staff Report #20-798:

- 1) Changing "Day Care Centers (Children and Adults)" from a Prohibited Use to being allowed with a Minor Use Permit (a staff level review), which is consistent with the level of review required in the C-N, C-C, and C-O zones;
- 2) Changing "Hospitals and Surgery Centers" from a Prohibited Use to being allowed with a Conditional Use Permit (Planning Commission review), which is consistent with the level of review in the C-N, C-C, C-O, and B-P zones;
- 3) Changing "Medical Offices and Clinics" from a Prohibited Use to being allowed as a Permitted Use (no special review required), which is consistent with the level of review in the C-N, C-C, and C-O zones;
- 4) Changing "Building Supplies/Home Improvement" from a Prohibited Use to being allowed with a Conditional Use Permit (Planning Commission review), which is consistent with the level of review in the C-C zone;
- 5) Changing "Mobile Food Vendors" from a Prohibited Use to being allowed with a Conditional Use Permit (Planning Commission review), which is consistent with the level of review in the C-N, C-C, C-O, and B-P zones;
- 6) Changing "Restaurants" from a use requiring a Site Plan Review Permit to being allowed as a Permitted Use (no special review required), which is consistent with the level of review in the C-N, C-C, and C-T zones;
- 7) Changing "Vehicle Parts and Accessories Sales" from a Prohibited Use to being allowed as a Permitted Use (no special review required), which is consistent with the C-N, C-C, C-T, and C-G zones; and,
- 8) Amending Footnote #9 to read "Permitted only as part of a shopping center or other retail establishment with a minimum of 8,000 square feet (reduced

from 20,000 square feet) of floor area devoted to groceries.” Footnote #9 requires that all allowed land uses in the C-SC zone, except Community Gardens which can be an interim use, be part of an overall development which includes a grocery store.

Proposed Changes Related to Personal Services

- D) Personal Services are defined in MMC 20.90.020 (#155) as “an establishment that provides services to individuals and that may provide accessory retail sales of products related to the services provided. This definition includes beauty salons, barber shops, pet grooming services, veterinary clinics, tanning salons, nail salons, tailors, laundromats, dry cleaners, and other similar land uses.” Prior to the Comprehensive Zoning Ordinance Update in 2016, Personal Services required Conditional Use Permits in almost every commercial zone. It was believed that such uses required more parking than other land uses and often required special building requirements (such as enhanced ventilation) that would be best reviewed on a case by case basis by the Planning Commission. In contrast to Professional Office uses, these Personal Services were also seen as more “retail” in nature and not necessarily compatible with the Professional/Commercial Office (C-O) zone and, therefore, should be limited in number at any particular location. However, over the years, the attitude of office users and owners have changed toward these uses since they are similar in nature in that they generally see clients by appointment and they have become an integral part of most professional office complexes.

In 2016, the level of review for Personal Services was changed to Site Plan Review in the C-O, C-T, C-G, and B-P zones and to Permitted Uses in the C-N, C-C, and C-SC zones. The requirement for a Site Plan Review Permit was mostly to address building requirements for beauty and nail salons regarding ventilation and some concerns about parking. Since 2016, the Site Plan Review Committee has approved numerous Site Plan Permits for Personal Uses in C-O zones and because of additional building code requirements, special conditions are no longer needed to address these ventilation issues and parking has not been an issue. Owners of professional office complexes have also expressed that Personal Uses are desirable tenants and that the requirement for a Site Plan Review permit is excessive. Therefore, the Site Plan Review Committee has recommended that the level of review for such Personal Uses be reduced in all zones. The proposed Ordinance at Attachment B of Staff Report #20-798 recommends that Personal Services now be Permitted Uses in the C-O zone (consistent with the C-C, C-N, and C-SC zones) and require Minor Use Permits in the C-T, C-G, and B-P zones.

Removing Prohibition Against Food Trucks in the City Center

- E) As described in the Background section of Staff Report #20-798, in 2006, the City Council adopted Ordinance #2231 in response to the Downtown Merced Strategy. The Ordinance established the “City Center” area, defined as the area bounded by 19th Street, 16th Street, “O” Street, and Martin Luther King Jr. Way; and prohibited certain uses within the City Center area, including mobile food trucks, bail bond

businesses, skateboard shops, methadone clinics, and drug/alcohol rehabilitation centers. According to the Administrative Report prepared at the time, it was felt that these businesses did not foster a walkable downtown, support commerce at other downtown businesses, and promoted a negative perception of downtown safety. In particular, food trucks were cited as being “blighting influences that contributed to littering, loitering, and providing a place for illegal activity due to their mobile and transient nature.”

Since that time, attitudes toward food trucks have changed dramatically, both in the City of Merced and nationwide. Food trucks now offer many gourmet food options in addition to more traditional fare, allow entrepreneurs to start restaurants without high overhead costs, and are seen to contribute to vibrant and walkable downtowns. In fact, many “brick and mortar” restaurants also have food trucks to expand their clientele and allow them to cater events outside their permanent locations. Many cities designate specific areas where food trucks can gather, either along City streets or in designated parking lots that provide seating, bathrooms, shade, refuse containers, and other amenities. The City of Merced allows such “food truck parking areas” in MMC 20.44.020, which also established operational and design standards for food trucks. In recent years, the City has approved one such parking area and many standalone food trucks. Recently, the Downtown Steering Committee and City staff have recommended removing the prohibition against food trucks in the City Center in response to these changing attitudes and the desire to accommodate some new Downtown businesses who wish to utilize food trucks. Therefore, the Draft Ordinance at Attachment B of Staff Report #20-798 recommends removing the reference to Footnote #10, which prohibits the location of land uses within the City Center, from the “Mobile Food Vendors” section of Table 20.10-1 in the Regional/Central Commercial (C-C) Zone. Mobile Food Vendors would still require Conditional Use Permits in the C-C Zone, but could be allowed in any portion of the C-C zone.

Breweries, Distilleries, and Wineries

- F) The Downtown Steering Committee has also recommended that Breweries, Distilleries, and Wineries be added to Table 20.10-1 as a specific land use in order to encourage their development in the City. Such establishments, when associated with food service, are seen as desirable uses. In general, such establishments will produce their own beer, wine, or liquor either onsite or at a larger production facility and offer consumption and sale of that product as part of a restaurant in an urban location, often including retail sales as well. The Dust Bowl Brewery in Turlock is one such example. In February 2020, it was announced that Tioga-Sequoia Brewing Company, after 12 years in Downtown Fresno, would expand its business by establishing a taproom in Merced in the historic Tioga on N Street.

The proposed Ordinance at Attachment B of Staff Report #20-798 would add “Breweries, Distilleries, and Wineries” as Permitted Uses in Table 20.10-1 with Footnote #19 in the C-C, C-T, C-G, and B-P Zones, and prohibited in all other commercial zones (C-O, C-N, and C-SC). Footnote #19 would differentiate these

uses from traditional bars or nightclubs that require Conditional Use Permits by requiring that “the business includes a full-service restaurant and the on-site sale of beer, liquor, or wine made by the same business either on-site or off-site.”

Environmental Clearance

- G) The 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* is being recommended (see Attachment D of Staff Report #20-798).

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING SECTION 20.10 ("COMMERCIAL
ZONING DISTRICTS") AS WELL AS TABLE 20.10-
1 ("PERMITTED LAND USES IN THE
COMMERCIAL ZONING DISTRICTS") OF THE
MERCED MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Day Care Centers (Children and Adults)" is changed from "X—Use Not Allowed" to "M—Minor Use Permit Required" in the Shopping Center Commercial (C-SC) Zone.

SECTION 2. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Hospitals and Surgery Centers" is changed from "X—Use Not Allowed" to "C—Conditional Use Permit Required" with Footnote #9 in the Shopping Center Commercial (C-SC) Zoning District.

SECTION 3. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Medical Offices and Clinics" is changed from "X—Use Not Allowed" to "P—Permitted Use" with Footnote #9 in the Shopping Center Commercial (C-SC) Zoning District.

SECTION 4. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended to add "Breweries, Distilleries, and Wineries" is added as "X—Use Not Allowed" in the Office Commercial (C-O), Neighborhood Commercial (C-N), and Shopping Center Commercial (C-SC) Zoning Districts and as "P—Permitted Use" with Footnote #19 in the Regional/Central Commercial (C-C), Thoroughfare Commercial (C-T), General Commercial (C-G), and Business Park (B-P) Zoning Districts.

SECTION 5. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Building Supplies/Home Improvement" is changed from "X—Use Not Allowed" to "C—Conditional Use Permit Required" with Footnote #9 in the Shopping Center Commercial (C-SC) Zoning District.

SECTION 6. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Mobile Food Vendors" is changed from "C—Conditional Use Permit Required" with Footnote #10 to "C—Conditional Use Permit Required" with No Footnote and from "X—Use Not Allowed" to "C—Conditional Use Permit Required" with Footnote #9 in the Shopping Center Commercial (C-SC) Zoning District.

SECTION 7. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Personal Services" is changed from "SP—Site Plan Review Permit Required" to "P—Permitted Use" in the Commercial Office (C-O) Zoning District, from "SP—Site Plan Review Permit Required" to "M—Minor Use Permit Required" in the Thoroughfare Commercial (C-T) and General Commercial (C-G) Zoning Districts, and from "SP—Site Plan Review Permit Required" to "M—Minor Use Permit Required" with Footnote #12 in the Business Park (B-P) Zoning District.

SECTION 8. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Restaurants" is changed from "SP—Site Plan Review Permit Required" with Footnote #9 to "P—Permitted Use" with Footnote #9 in the Shopping Center Commercial (C-SC) Zoning District.

SECTION 9. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended so that "Vehicle Parts and Accessories Sales" is changed from "X—Use Not Allowed" to "P—Permitted Use" with Footnote #9 in the Shopping Center Commercial (C-SC) Zone.

SECTION 10. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is

hereby amended so that Footnote #9 is amended as follows: “9. Permitted only as part of a shopping center or other retail establishment with a minimum of ~~20,000~~ 8,000 square feet of floor area devoted to the sale of groceries.”

SECTION 11. AMENDMENT TO CODE. Table 20.10-1, "Permitted Land Uses in the Commercial Zoning Districts," of the Merced Municipal Code is hereby amended to add Footnote #19 as follows: “19. Provided that the business includes a full-service restaurant and the on-site sale of beer, liquor, or wine made by the same business either on-site or off-site.”

SECTION 12. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 13. 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 14. 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 _____, 2021, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2021, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:

STEPHANIE R. DIETZ, CITY CLERK

BY:


Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:


City Attorney

8-7-19
Date

[https://cityofmerced-my.sharepoint.com/personal/espinosak_cityofmerced_org/Documents/Documents/KIM/PROJECTS/2020/ZOA 20-01--Comm District/Draft Ord-ZOA 20-01 Comm.docx](https://cityofmerced-my.sharepoint.com/personal/espinosak_cityofmerced_org/Documents/Documents/KIM/PROJECTS/2020/ZOA%2020-01--CommDistrict/Draft%20Ord-ZOA%2020-01%20Comm.docx)

CITY OF MERCED
Planning Commission

Resolution #4058

WHEREAS, the Merced City Planning Commission at its regular meeting of January 20, 2021, held a public hearing via teleconference and considered **Zoning Ordinance Amendment #20-02**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.42 (“Accessory Dwelling Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (ADUs) to meet the modified requirements of State Law in regards to minimum lot sizes, owner-occupancy requirements, maximum size of an ADU, application review times, parking requirements, the charging of impact fees, the sale of ADUs, “junior ADUs,” and other requirements of State Law; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through E of Staff Report #20-799 (Exhibit A); 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 #20-34, and approval of Zoning Ordinance Amendment #20-02, as outlined in Exhibit B and subject to the Findings set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, White, and Chairperson Harris

NOES: None

ABSENT: None

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4058

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January 20, 2021

Adopted this 20th day of January 2021

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A –Findings/Considerations

Exhibit B – Draft Ordinance

Findings and Considerations
Planning Commission Resolution #4058
Zoning Ordinance Amendment #20-02

FINDINGS/CONSIDERATIONS:

General Plan Policies Related to This Application

- A) The proposed zoning ordinance amendment would make changes in response to changes in State Law regarding accessory dwelling units. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

State Laws Regarding Accessory Dwelling Units

- B) As described in the Background section of Staff Report #20-799, the State of California has declared that allowing accessory dwelling units (ADUs) is an essential component in addressing housing needs in California. In 1982, the State enacted Government Code Section 65852.2 establishing a mandate that every local agency adopt provisions for permitting accessory dwelling units. In 2003 and 2016, AB 1866, SB 1069, and AB 2299 were adopted making changes to the State Law provisions regarding ADUs. In 2019, the State adopted SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671, which all made additional changes to State Law regarding ADUs. In 2020, further revisions were adopted through AB 3182.

A complete summary of the changes in State Law in 2019 and 2020 are contained in Attachment D of Staff Report #20-799. Some of these changes do not apply to local agencies, but to common interest developments or to private covenants, codes, and restrictions (CC&R's) not enforced by the City. In general, the changes that affected the City's Ordinance included:

- 1) States that applications for ADUs are deemed approved if not acted on within 60 days;
- 2) Requires ministerial approval of one ADU and one JADU (Junior ADU) per lot if certain conditions are met;
- 3) Prohibits standards for minimum lot sizes;
- 4) Clarifies areas for ADUs can be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety;
- 5) Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025;
- 6) Prohibits the establishment of a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom, and requires approval of a permit to build an ADU of up to 800 square feet;

- 7) Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of off-street parking spaces cannot be required;
- 8) Reduces the maximum application review time from 120 days to 60 days;
- 9) Clarifies the definition of “public transit” and “accessory structure;”
- 10) Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees; ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit;
- 11) Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs;
- 12) Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them;
- 13) Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence;
- 14) Requires a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue; and,
- 15) AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households.

Merced’s Ordinance Regarding Accessory Dwelling Units

- C) As described in the Background section of Staff Report #20-799, the City’s Zoning Ordinance has allowed for accessory dwelling units with certain restrictions since at least the early 1980’s. In the late 1990’s, the City began to let the units be rented, but either the primary unit or the accessory unit had to be owner occupied. In 2016, the City’s ADU zoning standards in Chapter 20.42 of the Merced Municipal Code were adopted as part of the comprehensive Zoning Ordinance Update. In 2019, the City revised its ADU standards to conform with State Law through the adoption of Ordinance #2502, which became effective on September 19, 2019. In October 2019, the State again adopted substantial changes to State Law requirements regarding ADUs and again made amendments in 2020. Therefore, the City’s ADU Ordinance must be revised again.

Proposed Changes to MMC 20.42 (Accessory Dwelling Units)

- D) As noted in Finding C, the City’s ADU ordinance must be revised again to be in conformance with the State Law changes described in Finding B. The Draft Ordinance can be seen at Attachment B of Staff Report #20-799 and those same modifications to Chapter 20.42 are illustrated in Attachment C of Staff Report #20-799. In general, these modifications include the following:
- 1) Modifies Section 20.42.010 (“Purpose and Applicability”) to reference the current State Law provisions, add references to Junior ADUs, and clarify that this chapter is applicable to all parcels in the City that are zoned residential or allow residential uses;
 - 2) Modifies Section 20.42.020 (now entitled “Application Process and Review and Nonconforming Conditions”) by removing the requirement for a Minor Use Permit for an ADU and spelling out the ministerial application process required, “deemed approved” stipulations, processing times, and the enforcement of non-conforming conditions;
 - 3) Modifies Section 20.42.030 (now entitled “Type and Number of ADUs and Site and Design Standards”) as follows:
 - a) Adds the types and number of ADUs allowed per parcel with single and multi-family dwellings;
 - b) Modifies the Site Requirements to clarify that there is no minimum parcel size and spells out provisions for a “statewide exemption ADU;”
 - c) Clarifies the maximum size/floor area for ADUs;
 - d) Deletes the previous requirements regarding relationship to the primary dwelling;
 - e) Spells out the exemptions to development standards for ADUs, defines ADUs as an accessory use, clarifies subdivision restrictions, and clarifies the need for the parcel to have public water and sewer service;
 - f) Spells out design requirements in regard to height, finish materials, roof form, setbacks, addresses, fire sprinklers, and passageways; and,
 - g) Clarifies the parking requirements and parking exemptions for ADUs
 - 4) Modifies Section 20.42.040 (“Occupancy Standards and Fee Requirements”) as follows:
 - a) Adds that no owner occupancy requirement shall be enforced for ADUs built between January 1, 2020, and January 1, 2025;
 - b) Adds that ADUs may be rented, but not for less than a 30-day term;
 - c) Outlines the narrow circumstances for allowing separate conveyance or sale of an ADU; and,
 - d) Clarifies fee requirements and exemptions for ADUs.
 - 5) Adds new Section 20.42.050 [“Standards for Junior Accessory Dwelling Units (JADUs)”], which spells out provisions for Junior Accessory Dwelling Units.

Environmental Clearance

- E) The 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 is being recommended (see Attachment E of Staff Report #20-799).

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING SECTIONS 20.42 ("ACCESSORY
DWELLING UNITS") OF THE MERCED
MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Chapter 20.42, "Accessory Dwelling Units," of the Merced Municipal Code is hereby repealed and amended to read as follows:

"20.42 Accessory Dwelling Units

Sections:

20.42.010 Purpose and Applicability

**20.42.020 Application Process and Review and Nonconforming
Conditions**

**20.42.030 Type and Number of ADUs and Site and Design
Standards**

20.42.040 Occupancy Standards and Fee Requirements

20.42.050 Standards for Junior Accessory Dwelling Units (JADUs)

20.42.010 Purpose and Applicability

This chapter establishes standards for the development of accessory dwelling units ("ADUs") in conformance with Government Code Section 65852.2 and 65852.22. These standards are intended to allow for accessory dwelling units and junior accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

The provisions of this chapter apply to all parcels in the City of Merced that are zoned residential or allow

**EXHIBIT B
OF PLANNING COMMISSION RESOLUTION #4058**

residential uses.

20.42.020 Application Process and Review and Nonconforming Conditions

A. Ministerial Review. A permit application for an accessory dwelling unit (ADU) or junior accessory dwelling (JADU) may be allowed with ministerial review, approval, and issuance of a building permit, without discretionary review or a public hearing. The correction of nonconforming zoning conditions (“a physical improvement on a property that does not conform to zoning standards”) or the installation of public improvements cannot be required as a condition for ministerial approval.

B. Processing Time. If there is an existing single-family or multi-family dwelling on the parcel, the City shall act on the application to create an ADU or a JADU within 60 days from the date a complete application is received, unless either:

1. The applicant requests a delay, in which case the 60-day time period shall be tolled for the period of the delay; or,
2. The construction of a single-family dwelling is proposed at the same time as a construction of an ADU or a parcel, in which case, the City shall not approve the permit for the ADU prior to the permit for the single-family dwelling and shall not issue the Certificate of Occupancy for the ADU prior to the Certificate of Occupancy for the single-family dwelling.

If the local agency has not acted upon the complete application within 60 days, and neither of the above criteria is met, the application shall be deemed

approved.

C. Nonconforming Conditions. Notwithstanding Chapter 20.52 (Nonconforming Parcels, Uses, and Structures) to the contrary, an owner of an ADU or JADU that receives a notice to correct violations or abate nuisance, in relation to the ADU or JADU, may request a delay for 5 years in enforcement of a building standard, as long as the violation is not a health and safety issue as determined by the City of Merced, subject to compliance with the Health and Safety Code Section 17980.12 and the following conditions:

1. The ADU was built before January 1, 2020; or,
2. The ADU was built on or after January 1, 2020 in a local jurisdiction with a noncompliant ADU ordinance, but the ordinance is compliant at the time the request is made; and,
3. The City shall not approve any such applications after January 1, 2030; and,
4. This section shall remain in effect only until January 1, 2035 and as of that date is repealed.

20.42.030 Type and Number of ADUs and Site and Design Standards

A. Location. Accessory dwelling units shall be permitted in districts zoned to allow single-family or multi-family residential or mixed use as provided in Part 2 (Zoning Districts).

B. Types of Accessory Dwelling Units. An accessory dwelling unit (ADU) approved under this Chapter may take any of the following forms:

1. **Attached.** An ADU may be a new habitable space attached to an existing or proposed single-family dwelling.

2. **Detached.** An ADU may be a new detached habitable structure located on the same parcel as an existing or proposed single-family dwelling.
3. **Converted.** An ADU may be located within areas converted to habitable space that complies with the California Building Code for a dwelling, such as:
 - a) An area within an existing single-family dwelling (e.g. an attached garage); or,
 - b) An existing accessory structure (e.g. a detached garaged or pool house) located on the same parcel as the single-family dwelling; or,
 - c) Portions of existing multi-family structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages.
4. **Junior Accessory Dwelling Unit (JADU).** A JADU is a dwelling, contained entirely within an existing or proposed single-family dwelling, that is a maximum of 500 square feet in size. A JADU may include separate facilities or may share sanitation facilities with the existing single-family dwelling. JADUs shall comply with Section 20.42.050 (Standards for Junior Accessory Dwelling Units).

C. Number of Accessory Dwelling Units Permitted Per Parcel

1. **Parcels with a Single-Family Dwelling.**
One ADU (converted, attached, or detached) and one JADU shall be allowed per lot with a proposed or existing single-family dwelling in conformance with the rest of this Chapter.
2. **Parcels with Multi-Family Dwelling(s).**
 - a. **Converted ADUs.** The number of converted ADUs, on a parcel with an existing multi-family dwelling, shall

not exceed 25 percent of the total number of dwelling units.

- b. Detached ADUs.** Not more than two detached ADUs may be located on a parcel that contains an existing multi-family dwelling.

D. Site Requirements

1. **No Minimum Parcel Size.** Accessory dwelling units that comply with this chapter shall be permitted on all legally established parcels, regardless of parcel size.
2. An accessory dwelling unit may only be established if a single-family dwelling unit ("primary dwelling") exists on the parcel or is being built at the same time.
3. **Statewide Exemption ADU.** No lot coverage, floor area ratio, open space, or minimum lot size requirement shall preclude the construction of an ADU up to 800 square feet, 16 feet in height, and with 4-foot side and rear yard setbacks. The construction of a detached Statewide Exemption ADU may be combined with a Junior ADU within any zone allowing residential or mixed use.

E. Size/Floor Area

1. *Attached or Converted Accessory Dwelling Units.* The floor area of an attached or converted ADU shall not exceed 50 percent of the living area of the existing primary single-family dwelling on the parcel or 1,200 square feet, whichever is less. Garages and carports are excluded from floor area calculations for both the primary dwelling and accessory unit.
2. *Detached Accessory Dwelling Units.* The floor

area of a detached accessory dwelling unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

F. Development Standards

1. An accessory dwelling unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, with certain exceptions, discussed in this Chapter.

2. The accessory dwelling unit (ADU) in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The ADU shall be deemed to be an accessory use or accessory building and shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the accessory dwelling unit independently of the primary dwelling unit or any portion of the property except in accordance with MMC 20.42.040(C). This stipulation shall be included in a recorded deed restriction on the property.

4. . An ADU or JADU shall only be allowed on parcels connected to public water and sewer service.

G. Design Requirements

1. **Height.** The height of an attached or converted

accessory dwelling unit shall not exceed the height of the existing single-family dwelling. The height of a detached ADU on a parcel containing a multi-family dwelling may not exceed 16 feet.

2. **Finish Materials and Roof Form.** . The ADU or JADU entrance shall have the same exterior finish materials as the existing or proposed single-family dwelling on the parcel and shall be of the same construction typical of other dwelling units in the zone. The ADU or JADU shall have the same roof form as the primary dwelling and shall not have a flat roof.

3. **Setbacks.** .

- a. When an existing detached accessory structure is converted to a detached ADU, no additional setbacks shall be required.
- b. When an ADU is constructed above a detached garage, a four-foot side and four-foot rear setback are required.
- c. No additional setbacks shall be required when a new structure containing an ADU is constructed in the same location (and to the same dimensions as the existing detached accessory structure).
- d. Four-foot side and four-foot rear setbacks shall be required for detached ADUs on parcels containing either existing single or multi-family dwellings.

4. **Addresses.** The addresses of both the primary dwelling and the accessory dwelling unit shall be displayed and clearly visible from the street for public safety purposes.

5. **Fire Sprinklers and Passageways.** Fire sprinklers are not required to be provided with an ADU if they are not required for the single-family dwelling. No passageway defined as “a pathway that is not unobstructed, clear to the sky, and extends from a street to one entrance of an ADU

or JADU” shall be required.

H. Parking

1. A maximum of one additional off-street parking space shall be provided for an accessory dwelling unit or per bedroom, whichever is less. Parking for an ADU may be provided as tandem parking on an existing driveway or in the front or rear setback areas. These spaces shall not be covered if located within the setback areas.

2. When all or a portion of a garage, carport, or other parking structure is converted or demolished to construct an accessory dwelling unit, the parking spaces displaced by the conversion are not required to be replaced.

3. The parking standards provided in this section and otherwise in this code do not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile walking distance of public transit (defined as “a location including but limited to a bus stop or train station, where the public may access strains, subways, buses, or other forms of transportation that charges set fares, runs on fixed routes, and are available to the public”); (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; (e) a car share vehicle is located within one block of the accessory dwelling unit; and (f) the ADU is an attached or converted ADU. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a building permit application.

20.42.040 Occupancy Standards and Fee Requirements

A. *Owner Occupancy.* The City shall not impose owner occupancy requirements on any ADUs or associated primary dwellings permitted between January 1, 2020, and January 1, 2025. After January 1, 2025, the following section shall apply. The owner of a parcel with an accessory dwelling unit shall be permitted to rent either the primary unit or the accessory dwelling unit, but not both, and may reside in either the primary dwelling unit or the accessory dwelling unit, if the accessory dwelling unit is located within an R-1 Zoning District or equivalent designation in a Planned Development or Residential Planned Development only. This requirement does not apply to any other Zoning Districts.

B. *Rental Term.* An ADU or JADU may be rented, provided the rental term is at least 30 continuous days or more. Non-continuous or transient occupancy is prohibited.

C. *Separate Conveyance.* An ADU shall not be sold or otherwise conveyed separately from the principal residence, except when sold by a qualified nonprofit corporation to a qualified buyer in accordance with Government Code Section 65852.26 with affordability restrictions.

D. *Fees and Other Requirements.*

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service unless the ADU or JADU is constructed with a new single-family dwelling; and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

2. Accessory dwelling units contained within the

existing space of a single family residence or accessory structure are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

3. A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees. However, no impact fees shall be imposed on ADUs of less than 750 square feet. For an ADU larger than 750 square feet, any impact fee shall be charged proportionately in relation to the square footage of the single-family dwelling.

4. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services."

5. A JADU shall not be considered a separate or new dwelling for the purposes of providing service for water, sewer, and/or power.

20.42.050 Standards for Junior Accessory Dwelling Units (JADUs)

- A. All other provisions for ADUs in this chapter shall also apply to Junior Accessory Dwelling Units (JADUs) except as provided below.
- B. *Location.* A JADU shall be entirely within the walls of an existing or proposed single-family dwelling.
- C. *Number.* A maximum of one JADU is allowed per parcel within an existing or proposed single-family dwelling.
- D. *Size.* A JADU shall not exceed 500 square feet in size.
- E. *Entrance.*

1. A JADU shall have an entrance that is separate from the main entrance of the existing or proposed single-family dwelling.
 2. A Converted ADU or JADU may include an expansion of a maximum 150 square feet beyond the physical dimensions as the existing accessory structure or single-family dwelling. This expansion shall be limited to accommodating ingress and egress from the ADU or JADU.
- F. Kitchen.* A JADU shall include an efficiency kitchen which shall include all of the following:
1. Cooking facilities with appliances; and,
 2. Food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
- G. Owner Occupancy.* The owner shall reside on the property in either the newly created JADU or the remaining portion of the single-family dwelling, unless the owner is a governmental agency, land trust, or housing organization.
- H. No Separate Conveyance.* A JADU shall not be sold or otherwise conveyed separately from the single-family dwelling on a parcel, except when sold to a qualified buyer in accordance with Government Code Section 65852.26.
- I. Deed Restriction.* Prior to issuance of a Building Permit, a deed restriction shall be recorded on the property indicating the following:
1. The size of the JADU is restricted to a maximum of 500 square feet; and the JADU shall contain cooking facilities with appliances and food preparation counter

and storage cabinets that are of reasonable size in relation to the size of the JADU;

2. The deed restriction shall run with the land and may be enforced against future property owners;
3. Owner-occupancy is required in either the JADU or the remaining portion of the single-family dwelling; and,
4. The JADU shall not be sold or otherwise conveyed separately from the single-family dwelling.

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 _____, 2021, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2021, by the following called vote:

AYES:

NOES: ABSTAIN: ABSENT:

**Council
Members:**

ouncil Members:

Council Members:

C

Council Members:

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY:



Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

Date