



## Legislation Text

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**File #:** 17-136, **Version:** 1

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**SUBJECT:** Public Hearing - Appeal of Conditions #8 and #17 of Planning Commission Resolution #3077 for Conditional Use Permit #1216 for Merced Poker Room at 1459 Martin Luther King, Jr. Way

### REPORT IN BRIEF

This is an appeal of Conditions #8 and #17 of Planning Commission Resolution #3077 regarding the number of tables allowed to be present within the card room facility.

### RECOMMENDATION

**City Council** - Adopt a motion approving **Resolution 2017-18**, a Resolution of the City Council of the City of Merced, California, denying an appeal by Jarhett Blonien on behalf of Tongtoua Yang concerning Conditions #8 and #17 of Planning Commission Resolution #3077 approving Conditional Use Permit #1216.

### ALTERNATIVES

1. Refer back to staff for reconsideration of specific items (specific items to be addressed in City Council motion); or
2. Continue to a future City Council meeting (date and time to be specified in City Council motion).

### AUTHORITY

Merced Municipal Code Chapter 20.74 - Appeals grants the City Council authority to hear an appeal of a decision made by the Planning Commission.

### DISCUSSION

#### Appeal Request

The applicant has requested an appeal of Conditions #8 and #17 of Planning Commission Resolution #3077 for Conditional Use Permit #1216. Conditional Use Permit (CUP) #1216 allows an increase in tables at the Merced Poker Room located at 1459 Martin Luther King, Jr. Way (Attachment 1) from 4 tables to 8 tables. Conditions #8 and #17 of Planning Commission Resolution #3077 (Attachment 2) limit the number of tables on the premises to 8 tables in keeping with the approval as follows:

8. This approval is for the addition of four card tables in addition to the four that were previously approved by Conditional Use Permit (CUP) #1205. No more than 8 card tables shall be allowed within this cardroom.

17. The maximum number of tables allowed for this card room is limited to the number allowed under this Conditional Use Permit and is limited to 8 tables.

The applicant is requesting the appeal in order to allow the Merced Poker Room to have more than 8 tables on the premises. The appeal is not to allow more than 8 tables to be operating at one time, but to allow certain tables to be marked as “non-operational.” Below is an excerpt from their letter of appeal. The entire letter is notated as Attachment 3:

*“Different approved controlled games require different types of tables, and therefore the Merced Poker room needs to have the flexibility to open and close tables to support different customer needs. For example, a poker table is different than a table which would be used for a pit game like black jack.*

*Therefore, to reach operational efficiency, the Merced Poker Room needs to have around 15 tables present within the facility.”*

The letter also states that the Merced Poker Room is currently operating with more tables on the premises than approved for, but never having more than the approved number in operation at any given time.

#### Background

In 1997, the State of California passed the Gambling Control Act. The Act requires the Department of Justice, Division of Gambling Control, to issue a state gambling license to all operating and new card rooms in order for them to operate in the state. One of the requirements of the Act is that the jurisdiction in which the card room is located has in place an ordinance with specific criteria specified. The City has had such an ordinance in place since 1998.

In 2005, the City received a letter from the Department of Justice indicating that specific changes to our ordinance were necessary to comply with State law. The City’s ordinance was subsequently amended to comply with state law.

In April 2016, the City amended its cardroom ordinance again. This time, the ordinance was amended as follows:

- Increased the number of card tables allowed from 8 to 16;
- Limited any single card room to a maximum of 12 tables (subject to the citywide limit of 16 tables);
- Removed City-imposed limits on bets, wagers, and antes;
- Required a cardroom with permission to expand the number of card tables to do so within one year of CUP approval; and,
- 24-hour operations were expanded from just the Thoroughfare Commercial (C-T) zone to include the Central Commercial (C-C) zone.

A copy of the revised ordinance is notated as Attachment 4.

#### History of Merced Poker Room and Planning Commission Actions

The Merced Poker Room was originally opened in 2006 at 2217 Yosemite Parkway. As a result of the Bradley Overpass Project and re-routing of Baker Drive, the poker room was forced to relocate in 2009. On September 9, 2009, the Planning Commission approved CUP #1137, which allowed the

Merced Poker Room to move from 2217 Yosemite Parkway to 1445 Martin Luther King, Jr. Way. In 2011, the Merced Poker Room was taken over by a new owner, Tangtousa Yang (the applicant). On November 4, 2015, the Planning Commission approved CUP #1205 authorizing the Merced Poker Room to relocate to 1245 Martin Luther King, Jr. Way. This approval allowed the business to maintain their existing four tables and to add the sale of beer and wine subject to obtaining a license from the California Department of Alcoholic Beverage Control and a Finding of Public Convenience or Necessity from the City Council.

On February 22, 2017, the Planning Commission approved Conditional Use Permit #1216 granting the Merced Poker Room the ability to increase the number of tables allowed at their facility from 4 tables to 8 tables.

There is one other cardroom located in the City of Merced. This cardroom, Poker Flats Casino, is located at 1714-1720 Martin Luther King, Jr. Way within a Central Commercial (C-C) zone. At the Planning Commission meeting on February 22, 2017, the Planning Commission approved a request to allow Poker Flats Casino to increase the number of tables allowed in their cardroom from 4 tables to 8 tables, consistent to what was approved for the Merced Poker Room.

Although the original request from both the Merced Poker Room and Poker Flats Casino was to increase the number of tables allowed within their respective establishments from 4 tables to 12 tables, the Planning Commission felt it was appropriate to allow each establishment to have the same number of tables. Because the maximum number of tables allowed within the City of Merced is 16 tables, each business was granted an additional 4 tables bringing the total number of tables within each business to 8 tables. An excerpt of the Planning Commission minutes for the February 22, 2017, meeting are notated as Attachment 5. The Planning Commission Staff Report is notated as Attachment 6.

#### Consideration of Appeal

The applicant is requesting the ability to have more than 8 tables on the premises of the Merced Poker Room. According to the applicant's appeal request (see Page 2 of Attachment 3), this request is supported by "the regulations of the California Gambling Control Commission which acknowledges that tables not in operation do not count against the cap on the number of tables." Their request explains that in order to operate efficiently, the Merced Poker Room needs to have approximately 15 tables present within the facility. However, the California Gambling Control Regulations do not preclude a local jurisdiction from enacting more stringent controls regarding the number of tables allowed within an establishment.

The City's Cardroom Ordinance (Attachment 4) specifically limits the number of tables allowed within the City of Merced to 16 and the number within any single cardroom to no more than 12 (See Section 9.08.020 F). Additionally, Section 9.08.020 E, specifically states "There shall be no increase in the number of card tables beyond sixteen (16) card tables without the approval of a majority of the voters of the city."

In consultation with the City Attorney, Planning Staff has reviewed the requested appeal and determined it is not consistent with the City's Cardroom Ordinance and this appeal cannot be granted. The current ordinance specifically limits the total number of tables within the City of Merced to no more than 16. It is staff's opinion that in order to grant the appeal, City Council would have to approve an amendment to the existing ordinance adding a definition of operational and non-

operational tables to the ordinance. This would have to be done through a separate ordinance amendment process. If this is the direction the City Council chooses and the ordinance language is simply amended to clarify the definition of a “card table,” once the ordinance is amended, the applicant would likely not need to request a modification to CUP #1216.

Another possible issue with having non-operational tables is that of enforcement. The Police Department does not have sufficient staff to monitor how many tables are being operated on a regular basis. Therefore, the City has no way of knowing if the cardroom only has 8 tables in operation at any one time.

In addition to the City’s ordinance limiting the number of tables, the California Code of Regulations (CCR) (Attachment 7) that the applicant cites to support his position that the cardroom can have more tables than permitted is not applicable. If the City’s ordinance distinguished between operating and non-operating tables, then the Minimum Internal Controls (MIC) defined in state law would have to be followed. However, the CCR and MIC are not the state or local authority for more card tables. Therefore, the City’s ordinance dictates the number of tables allowed within the City and within any cardroom, not the California Code of Regulations.

Based on the above analysis, it is staff’s opinion that this appeal cannot be granted. Therefore, staff is recommending City Council adopt the draft resolution (Attachment 8) denying the appeal.

## **IMPACT ON CITY RESOURCES**

If City Council directs staff to amend the Cardroom Ordinance, City staff from the Planning Department and City Attorney’s office would be primarily impacted. However, other departments would be involved as well. The City also does not have a fee to amend sections of the Municipal Code other than the Zoning Ordinance. The fee to amend the Zoning Ordinance is \$1,793. It is staff’s recommendation that if Council wishes to have the ordinance amended to allow the applicant to have more than 8 tables on the premises, that the applicant pay the fee of \$1,793 to help cover the costs incurred for processing such an amendment.

## **ATTACHMENTS**

1. Location Map
2. Planning Commission Resolution
3. Appeal Request (letter from Jarhett Blonien)
4. MMC 9.08.020 - Cardrooms
5. Planning Commission Minutes Excerpt
6. Planning Commission Staff Report
7. CCR Section 12391, Gambling Floor Operations
8. Draft City Council Resolution