

**CITY OF MADERA PLANNING COMMISSION
REGULAR MEETING
September 8, 2015**

CALL TO ORDER: The meeting was called to order by Chairperson Hutchings at 6:00 p.m.

ROLL CALL

PRESENT: Chairperson Kenneth Hutchings
Vice Chairperson Ruben Mendoza
Commissioner Robert Gran, Jr.
Commissioner Jim DaSilva
Commissioner Jeff Dal Cerro

ABSENT: Commissioner Bruce Norton
Commissioner Pamela Tyler

STAFF: Kira Noguera, Assistant Planner
Christopher Boyle, Planning Manager
Keith Helmuth, City Engineer
David Merchen, Community Development Director
Francisco Nuñez, Assistant Engineer
Brent Richardson, City Attorney
Zelda León, Recording Secretary

PLEDGE: Commissioner Hutchings led the Pledge of Allegiance.

PUBLIC COMMENT: None

MINUTES

Motion made by Commissioner Gran; seconded by Commissioner DaSilva to approve the Minutes of June 9, 2015, July 14, 2015 and August 11, 2015; motion was approved unanimously.

CONSENT ITEMS: None

NON-PUBLIC HEARING ITEMS: None

PUBLIC HEARING ITEMS

1. CUP 2015-25 & SPR 2015-21 – Rescue Mission Special Events Revisions and Refrigeration Unit Replacement

A noticed public hearing to consider modification of a conditional use permit to allow for clarification of and revisions to the Rescue Mission use permit conditions of approval in order to address operational concerns and allow for special events, and site plan review to allow for the removal and replacement of a failing refrigeration unit. The site is located at the northwest corner of Elm Avenue and Clinton Street in the R2 (Residential) and PD-4500 (Planned Development) Zone District, with a MD (Medium Density) and LD (Low Density) General Plan land use designation (APN: multiple). The Planning

Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15303.

Kira Noguera, Assistant Planner summarized the report. The use is consistent with the purpose and intent of the Zoning Ordinance and can be made compatible with the surrounding uses. There is sufficient space to allow for the replacement of the refrigeration unit. Provisions guiding special events have been incorporated into the use permit's conditions of approval to address operational concerns.

The item was opened for public comment.

Mike Unger, Executive Director of Rescue Mission, 129 River Pointe, Madera, CA spoke in favor of the project. Mr. Unger was asked and responded that he had read the staff report and is in agreement with the conditions of approval.

No further public comment on this item was presented; public hearing on this item was closed.

Motion made by Commissioner Gran; seconded by Commissioner Dal Cerro to approve Conditional Use Permit 2015-25 and Site Plan Review 2015-21, based on and subject to the findings and conditions of approval; motion was approved unanimously.

2. CUP 2015-24 & SPR 2015-28 – Wal-Mart Temporary Outdoor Storage

A noticed public hearing to consider a conditional use permit to allow for temporary placement of up to ten storage containers during the 2015 holiday sales season at the Wal-Mart located on the northeast corner of the intersection of North Schnoor Avenue and West Cleveland Avenue (1977 West Cleveland Avenue), in the C1 (Light Commercial) Zone District, with a C (Commercial) General Plan land use designation (APN: 013-160-014). The Planning Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15301.

Kira Noguera, Assistant Planner summarized the report. The placement of ten storage containers for usage during the holiday sales season has occurred in the past. Because of the design of the shopping center site, the temporary use can be made compatible with surrounding commercial development. It is recommended that the conditional use permit be approved as conditioned.

The item was opened for public comment.

Applicant, Denise Bachta, Wal-Mart Store Manager of 45 East Loop, Madera, CA spoke in favor of the project. Ms. Bachta was asked and responded that she had read the staff report and is in agreement with the conditions of approval.

No further public comment on this item was presented; public hearing on this item was closed.

Motion made by Commissioner Mendoza; seconded by Commissioner Gran to approve the requested Conditional Use Permit 2015-24 and Site Plan Review 2015-28 based on and subject to the findings and conditions of approval as listed; motion was approved unanimously.

3. CUP 2010-01 MOD & SPR 2015-26 – Taqueria Mexico

A noticed public hearing to consider modification of a conditional use permit allowing for the sale of beer and wine in conjunction with the operation of the Taqueria Mexico taqueria/carniceria located approximately 100 feet south of the southwest corner of the intersection of South Gateway Drive and West 6th Street (214 South Gateway Drive), in the C2 (Heavy Commercial) Zone District, with a C (Commercial) General Plan land use designation. The request is to allow for 24 hour operations (APN: 010-135-015). The Planning Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15301.

Christopher Boyle, Planning Manager summarized the report. There is no compelling reason to disallow the hours of operation to be open 24 hours per day. Staff recommends approval subject to conditions of approval which assure compatibility with surrounding uses.

The item was opened for public comment.

Applicant, Pedro Falcon of 25478 Avenue 19, Madera, CA spoke in favor of the project. Mr. Falcon was asked and responded that he has reviewed the staff report and is in agreement with the conditions of approval.

Mr. Falcon was advised that there were several questions for him and would he like translation provided. Mr. Falcon respond affirmatively. Translation was provided by Zelda León, Recording Secretary.

Mr. Falcon was advised that in the past there has been outdoor vending at his site such as selling of DVDs and CDs. Mr. Falcon stated that once he was made aware of these activities, he took steps to advise those involved to stop. He is aware that at times people who have fruit in their vehicles and that fruit is sold while the people eat at his site. He has told those people to stop and strongly enforces the ceasing of those activities.

No further public comment on this item was presented; public hearing on this item was closed.

Motion made by Commissioner DaSilva; seconded by Commissioner Gran to approve Conditional Use Permit 2010-01 MOD and Site Plan Review 2015-26 based on and subject to the following findings and conditions of approval; motion was approved unanimously.

4. CUP 2015-21 & SPR 2015-25 – Whole Body Bootcamp

A noticed public hearing to consider a conditional use permit and site plan review to allow for the establishment of a fitness training facility. The project site is located near the southeast corner of Pine Street and Maple Street in the I (Industrial) Zone District with an I (Industrial) General Plan land use designation. The tenant space is shared with PAC Studio (APN: 012-230-021, 022 & 079). The Planning Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15301.

Kira Noguera, Assistant Planner summarized the report. The industrial park has been utilized more and more by commercial uses over time. The tenant suite is approved as a performing arts studio. The site is a suitable location for a fitness facility. It is recommended that the conditional use permit and site plan review be approved as conditioned.

The item was opened for public comment.

Applicant, Debbie Coate of 1691 Glen Kippen Lane, Clovis, CA spoke in favor of his site. Ms. Coate was asked and responded that she had read the staff report and is in agreement with the conditions of approval.

No further public comment on this item was presented; public hearing on this item was closed.

Motion made by Commissioner Mendoza; seconded by Commissioner Da Cerro to approve Conditional Use Permit 2015-21 and Site Plan Review 2015-25, based on and subject to the findings and conditions of approval; motion was approved unanimously.

5. CUP 2013-16– Auto Dock (Consideration of Revocation)

A noticed public hearing to consider revocation of Conditional Use Permit 2013-16, which allowed for the operation of an automotive repair shop. The project site is located 500 feet west of the southwest corner of the intersection of East Almond Avenue and Emily Way (460 East Almond Avenue) in the C2 (Heavy Commercial) Zone District with a C (Commercial) General Plan land use designation (APN: 012-240-019).

Christopher Boyle, Planning Manager summarized the report. The site is not in compliance with the conditions of approval for Conditional Use Permit 2013-16. It is recommended that the Planning Commission consider this information, together with testimony provided during the public hearing, and make the appropriate findings and decision regarding the project.

Mr. Boyle advised the Commission that the applicant has made current efforts to comply and would thus recommend that this item be continued to the November 10, 2015 Planning Commission meeting.

Commissioners noted that they are impressed with the current efforts to come into compliance, but expressed that it is a shame it took them so long to do so. There is positive movement towards compliance, but more needs to be done.

The item was opened for public comment.

Applicant, Mariela Mendez of 26095 El Paso Drive, Madera, CA spoke in favor of this project.

Property Owner, Brent Breedlove spoke in favor of this project. Mr. Breedlove stated that he concurs with the recommendation for a continuance. The additional 55 days is more than enough time to come into complete compliance.

No further public comment on this item was presented; public hearing on this item was closed.

Motion made by Commissioner Gran; seconded by Commissioner DaSilva to continue Conditional Use Permit 2013-16 to the November 10, 2015 Planning Commission meeting to allow the applicant time to complete required steps; motion was approved unanimously.

Required Steps

- Submittal, review and approval of site plan and landscape plan within 30 days
- Installation of site improvements consistent with approved site plan and landscape plan with 53 days
- Removal of all non-permitted storage units and off-site relocation of stored materials within 53 days.

6. CUP 2015-20 & SPR 2015-24 – Adept Training

A noticed public hearing to consider a conditional use permit and site plan review to allow for the establishment of a fitness training facility. The project site is located on the south side of Almond Avenue, approximately 500 feet west of its intersection with Emily Way (460 East Almond Avenue) in the C2 (Heavy Commercial) Zone District with a C (Commercial) General Plan land use designation (APN: 012-240-019). The Planning Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15301.

Staff recommended that this item be continued to the November 10, 2015 Planning Commission meeting.

Motion made by Commissioner DaSilva; seconded by Commissioner Dal Cerro to continue the application for Conditional Use Permit 2015-20 and Site Plan Review 2015-24 to the November 10, 2015 Planning Commission meeting; motion was approved unanimously.

7. DOU 2015-01 – Tobacco Shops, Vape Lounges, and Hookah Bar Uses

A noticed public hearing to consider a determination of use for placement of tobacco shops, vape lounges and hookah bar uses within the zoning district use schedules of the Zoning Ordinance (Citywide). The Planning Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15061(b)(3).

Christopher Boyle, Planning Manager summarized the report. The characteristics of a tobacco shop have changed dramatically in recent years, and increasing interest in establishing new variants of tobacco stores have been observed. Recent inquiries for direction in the establishment of vape lounges and hookah bars have been received by staff. Staff seeks a determination of use from the Planning Commission in order to best direct prospective smoke shop operators and be best able to allow for the use in advance of the completion of the Zoning Ordinance update.

Staff was asked and responded that:

- Approval of this item would, in the future, require that tobacco store obtain a condition use permit.
- These stores could sell paraphernalia for marijuana inhalation.
- Mr. Boyle has not had an opportunity to research what surrounding areas are doing in regards to these type of uses.
- Current uses would be grandfathered in.
- Cannot retroactively apply new standards to current uses
- This determination does not impact existing uses
- If a current use is expanded, then it would need to apply for a Conditional Use Permit.

The item was opened for public comment.

Mayra Miranda of 17157 Mark Road, Madera, CA spoke in opposition of this item. Ms. Miranda is a Public Health Education Assistant with the Madera County Health Department representing the County Health Department in this matter.

- There is an overconcentration of tobacco sales in Madera (93 shops/stores).
- Nicotine content is not regulated, so the amount listed on the product may or may not be correct.
- E-cigarette juice is not regulated at this time.
- E-cigarettes could also be used with liquid marijuana. The product is not wrapped child proof.
- While teens may not try a cigarette they are more inclined to try e-products.
- Exposure in stores lead to more likelihood of experimentation with e-cigarettes, hookah pens, etc.

Mary Lou Cano of 217 High Street, Madera, CA spoke in opposition of this item.

- She is a parent, grandparent and a teacher at Millview Elementary.
- One of these businesses is across from Millview Elementary and the children walk by there every day. It is a big concern.
- There is one of these businesses one block from her house on Yosemite across from Department Services.
- These businesses are targeting low income areas.
- These businesses are not locating near Lincoln school or Berenda school.
- Ask that the Commission take into account the placement of these businesses.
- Would like to get more notice of these project as she would like to get more involved.

The Commission advised Ms. Cano:

- If there was a shopping center near Lincoln or Berenda schools, then there would probably one of these shops there.
- No matter what determination is taken here, current businesses would be grandfathered in.
- There is one of these businesses near Food 4 Less and there is a daycare across the street.
- They are glad she came and expressed her concerns.

Christopher Boyle, Planning Manager suggested that the following language be added to the motion:**and other businesses selling materials or providing services related to tobacco, vape, electronic cigarettes and hookah be allowed**.....

No further public comment on this item was presented; public hearing on this item was closed.

Motion made by Commissioner Gran; seconded by Commissioner DaSilva to approve Determination of Use 2015-01 that determines that tobacco stores, smoke shops, vape lounges, hookah bars and other businesses selling materials or providing services related to tobacco, vape, electronic cigarettes and hookah be allowed in the C1 (Light Commercial), C2 (Heavy Commercial) and I (Industrial) Zone Districts subject to the approval of a conditional use permit, based on and subject to the findings; motion was approved unanimously.

Findings

- Tobacco stores, smoke shops, vape lounges, hookah bars and other businesses selling materials or providing services related to tobacco, vape, electronic cigarettes and hookah possess operational characteristics that merit the review of the Planning Commission on a case by case basis.
- The Planning Commission hereby determines that tobacco stores, smoke shops, vape lounges, hookah bars and other businesses selling materials or providing services related to tobacco, vape, electronic cigarettes and hookah be allowed in the C1 (Light Commercial), C2 (Heavy Commercial) and I (Industrial) Zone Districts subject to the approval of a conditional use permit by the Planning Commission on a case by case basis.
- The Planning Commission hereby determines that the allowance for tobacco stores, smoke shops, vape lounges, hookah bars and other businesses selling materials or providing services related to tobacco, vape, electronic cigarettes and hookah in the C1 (Light Commercial), C2 (Heavy Commercial) and I (Industrial) Zone Districts, subject to the approval of a conditional use permit by the Planning Commission, provides consistency with the Zoning Ordinance.
- The determination that tobacco stores, smoke shops, vape lounges, hookah bars and other businesses selling materials or providing services related to tobacco, vape, electronic cigarettes and hookah be allowed in the C1 (Light Commercial), C2 (Heavy Commercial) and I (Industrial) Zone Districts subject to the approval of a conditional use permit by the Planning Commission is consistent with the Madera General Plan principles, goals and policies.

ADMINISTRATIVE REPORTS: None

COMMISSIONER REPORTS: None

ADJOURNMENT: Meeting adjourned at 8:02 pm.



Planning Commission Chairperson



Zelda León, Recording Secretary