

**Minutes of the Special Meeting of the
Lemoore Planning Commission
February 23, 2010**

Chairperson Kendall called the meeting to order at 7:00 p.m.

Attendance: Commissioners Marvin, Norgaard, Meade, Clement, Elgin, Kendall and Planning Director Smyth

Absent: Commissioner Ormonde

Public Comments and Inquiries: No Public Comments

Approval of Minutes of Meeting of February 8, 2010

It was moved by Commissioner Meade, seconded by Commissioner Clement, to approve the minutes of February 8, 2010 as submitted.

AYES: Meade, Clement, Elgin, Marvin and Kendall
NOES: None
ABSTAIN: Norgaard
ABSENT: Ormonde

Environmental Review #2009-20 for slow-fill and fast-fill Compressed Natural Gas Fueling to be added to the existing School District Maintenance Facility at 877 Iona Avenue.

Planning Director Smyth reminded the Commissioners that at the last meeting they had discussed the Compressed Natural Gas Station Environmental Review. She stated staff had not received any additional comments from the state or state agencies and today was the last day of the State Clearinghouse Review. She stated that Planning Commission can now make its final determination now that the review time has expired and that was the reason the Planning Commission meeting was moved one day to today.

Director Smyth stated that staff was looking for any further discussion or questions that Commissioners might have and that the approval of the attached Resolution would approve a Mitigated Negative Declaration environmental determination for the project. Chairperson Kendall asked if any of the Commissioners questions or further discussion for staff.

It was moved by Commissioner Clement, seconded by Commissioner Norgaard, to approve Resolution #2010-03.

AYES: Clement, Norgaard, Marvin, Meade, Elgin and Kendall
NOES: None
ABSTAIN: None
ABSENT: Ormonde

General Plan Conformity Determination for Abandonment of PUE in Previously Abandoned Hill St.

Planning Director Smyth stated that the abandonment of a portion of the existing PUE in the previously abandoned Hill Street was brought to Planning Commission at the direction of City Council as part of the downtown Leprino three story office building project. Part of condition #5 of the project required that new utility locations need to be coordinated with Public Works, and new easements will need to be prepared and dedicated by Leprino and recorded by the City and old ones properly abandoned.

Smyth stated that what staff was directed to do was to have Planning Commission determine General Plan conformity. She stated that because the General Plan addresses other easements, not necessarily public utility easement, the abandonment of the PUE did not conflict with General Plan policy.

It was moved by Commissioner Meade, seconded by Commissioner Norgaard, to approve Resolution #2010-04 determining the abandonment to be in conformity with the General Plan and forward a copy of the determination to the City Council.

AYES: Meade, Norgaard, Marvin, Clement, Elgin and Kendall
NOES: None
ABSTAIN: None
ABSENT: Ormonde

Discussion Regarding Regulation of Hookah Lounges

Planning Director Smyth stated that at the staff level there were questions if we should bring this item before the Planning Commission. As part of Chairperson's responsibility, staff could ask the Chairperson to help make that decision and Chairperson Kendall had stated that it needed to be brought to Commission for further discussion.

In regards to Marvin's question as to who asked about this type of business, Planning Director stated that a business has looked at a property in the CH district and the business is saying that they will only go in if a hookah lounge is allowed to go in. She stated that looking at the zoning ordinance for the City we do allow bars, cocktail lounges or nightclubs as permitted uses and also incidental accessory structures and uses located on the same site as permitted use. She stated that staff believes that regular smoking of cigarettes outdoors by individuals, within the confines of state and federal smoking laws would be a normal incidental use but did not think the hookah was a normal incidental use.

Kendall stated that it is her understanding that we do not have any guidelines and therefore she asked that the Commissioners explore the options for hookahs.

Arralula Viejo from the Environmental Health Services Tobacco Control Program stated that Hookah Lounges are the new trendy thing. She stated that in 2008 someone tried to come in Hanford but did not open up. She stated that the Hookah Lounges are subject to smoke free environment laws so if an establishment is involved with the sale of food they are prohibited from indoor smoking. The way that some businesses have gotten around the law is having it outdoors but the law prohibits any indoor smoking. She stated that the only other way for smoking to be allowed indoors is for the business to be a sole owner operated business and there are only very few in Kings County. She stated that if a business is not sole owner operated, smoking is prohibited.

Commissioner Clement asked if she has found in her research that illegal substances get used with what is already being used in the pipes.

Viejo stated that yes that it was her understanding from her statewide partnerships. She stated that there is a misconception that the legally sold tobacco is not as harmful because of the flavored tobacco but it is more harmful. She stated that even if no food was involved in a designated area outside, you still have the issue of water and ice used in the pipe. Viejo stated that in other Communities these establishments have opened up near colleges and universities which tend to allow under-aged youths to visit the establishments. She stated that because the pipes look like the bongos and peace pipes of the 70's associated with marijuana, that temptation and problems do occur for illegal behaviors.

Commissioner Norgaard stated that after review of the handouts he wasn't sure how Lemoore could have one and still be okay with the law. Viejo stated that they are pretty restricted. Commissioner Clement was in agreement and questioned if this was for outdoors or indoors.

Commissioner Elgin asked if this is the new trend how are the other areas getting around the state law and questioned if they were owner operated. Viejo stated that Kings County has not had to deal with it yet and she is not sure how the other counties are working with it, she did not have that information. Elgin asked if the other places are owner operated or how do they get around the law.

Kendall stated that there were a couple in Fresno claiming to be owner operated whether they were or not she didn't know. She stated that she had done some research herself on the internet, whether it was reliable or not, and found that many places claim to be owner operated but they are not. She stated that they could be sited but someone would have to catch them.

In response to Marvin's question regarding what the Commission is being asked to do, Kendall stated that it is her understanding that staff is asking for direction or guidance on how to handle this issue. She stated that staff is looking for direction from the Commission on how to handle this type of establishment. Kendall stated that we are exploring our options on what we can do.

Meade stated that this is a discussion item and we can't vote on something we can only give direction to staff as to how we want to proceed with this item. Norgaard stated that this is simply the matter of following state law and we need to abide with the law.

Acting Police Chief Laws stated that there are about 100 hookah lounges in the State of California. He stated that he believes Fresno has two and he has been in contact with the Fresno Police Department on one hookah lounge in Fresno, He stated that he was told that they had a high volume of calls and they identified the business as having a drain on the City services. He stated that they have something on the business license that they have to beef up security if they are a drain on City services. The owner has chosen to contract with the City of Fresno for off duty police officers to have security at that establishment so they don't lose their business license. He stated that there is no one there monitoring what goes in the pipes and they have had a lot of drug activity going on as people are smoking tobacco. He stated that this is a college trend and also a military trend. With the beefed up security the hookah lounge is still running. He stated that they have seen an increase in drug offenses and prostitution but this is Fresno. He stated that the way they get around the tobacco thing is because there is a lounge on the side of the business which is outdoors. He stated if Commission wants he can do more research and contact other places.

Meade stated that it is pretty clear that this use has to be outdoors. He stated the building in question has the room on the north side that is partially enclosed or open and this is the only place he could see the use happen. Meade asked if this is considered outdoors. Laws said yes. Laws said he is not sure what they are doing, he knows they have alcohol, food, and dancing. Clement stated that this use does not lend itself to a family outing atmosphere. Laws stated he agreed based on what he has heard about them.

In regards to Norgaard's question regarding regulation, Smyth stated that some cities have gone a bit further than the state and federal smoking laws and have said it could not be indoors or outdoors attached to the establishment. The general staff question is not if we have a submitted application at the current site but others sites tomorrow should the hookah use be considered incidental. Smyth stated that City Attorney Bacigalupi has always said if its not in the ordinance look in the dictionary and that is what staff has to go on. Smyth stated that due to the nature of the use, staff would rather get policy interpretation direction from the City decision makers that set the policy because there isn't any clear policy now.

Elgin stated that she knows people that would do this legitimately and she doesn't want to stop people that smoke from doing it and she does agree with Clement that other stuff would be brought in and that is not acceptable. She asked if through a Conditional Use Permit (CUP) we could require drug dogs going into the establishment. Smyth stated that you have the ability through penal codes to certain extent and regular laws.

City Manager Britz stated that the law is in Lemoore the way it is and you can't affect that tonight. You can't pass an ordinance or require a CUP tonight and if someone submits an application tomorrow, nothing you do from this point tonight will impact it other than expressing your opinion. He stated that if you feel strongly about the need for higher regulation then you can establish an ordinance with criteria just like that for gated communities. He stated that what we do know about the business that is potentially coming to Lemoore it resembles a night club. He stated that the problems that were described by Chief Laws are problems that you would find in any busy bar atmosphere. He stated that bars are huge resources drains. They have problems when you have a whole lot of people drinking and smoking. The Fresno business resembles a night club with security door, large dance floor, tent patio, the bar has a smoking area, so in answer to what you can do tonight you can give Holly ideas that if an application falls on your desk tomorrow lets not rubber stamp it and make sure they meet the health department requirement but you can't stop it. But if you have real serious concerns then we need to deal with the legislative action to better regulate the business. He stated that you can't throw up a bunch of hurdles at the last minute. He stated that with the rules we have know you can't prevent someone from having a hookah behind a bar, the narcotics we can address, the dancing we can address. He stated that we do encourage you to give us concerns.

Meade stated that it seems that rules we have today are clear.

Kendall suggested to look at what other cities are doing and what their ordinances look like and see what restrictions they have and do they infringe upon regular tobacco smokers and to what extent. Staff should look into having hookah business addressed separately from regular smoking in designated areas currently.

Meade stated that he wouldn't want to personally recommend that we put another layer of regulations on existing business we have in this community that allow regular smoking in areas because of something like this.

Kendall stated that staff should present to City Council what other cities are doing and how they regulate and can hookah regulations be separated from regular smoking and share Commission's discussed concerns.

Planning Director's Report:

Planning Director stated as an FYI to the Planning Commission that 10 proposals were received for the Zoning Ordinance Update. She stated that Chairperson Kendall, Smyth, Mayor Murray and Councilmember Siegel are reviewing, rating and ranking the 10 applications by this Friday and will be having interviews next week. Smyth mentioned that staff is anticipating starting the public meetings in April. She stated that one of the tasks is putting a schedule in the water bill to inform the public a participation opportunities. Smith stated that from beginning to end she expected the Zoning Ordinance Update to take about year.

Commission's Report and Request for Information:

Commissioner Clement thanked the Chief and the Health Department representative for their input.

Adjournment: The meeting adjourned at 8:00 p.m.