

**Minutes of the Regular Meeting of the  
Lemoore Planning Commission**

**April 26, 2010**

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

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

**Absent:** Commissioner Ormonde

**Public Comments and Inquiries:** No Public Comments

**Approval of Minutes of Meeting of April 12, 2010**

It was moved by Commissioner Norgaard, seconded by Commissioner Clement, to approve the minutes of April 12, 2010 as submitted.

**AYES:** Norgaard, Clement, Meade, Elgin, Kendall

**NOES:** None

**ABSTAIN:** Marvin

**ABSENT:** Ormonde

**Report and Recommendation on Hookah Parlors**

Smyth stated that about a month ago staff brought this item to the Planning Commission for discussion and Commission recommended that this item be taken to Council to consider providing further policy direction. She stated that the biggest question was if regular smoking can be separate from hookah. Smyth stated that staff found that regular smoking could be separate from hookah. Smyth stated that staff contacted the City Attorney and received three excerpts from other municipal codes regarding regulating hookahs which were taken to Council. She stated that each of these examples regulates hookah in a slightly different way. She stated that one defined the use then prohibits the use, one defined the use with some regulation, and the one defines the use and regulates it which is like the draft ordinance in front of you tonight.

Smyth reviewed the radius map showing the radius of school sites and recreation park areas. She noted that two park areas not listed on the map. Smyth stated the radii around the facilities reflect the Santa Cruz ordinance distances, and the purple, the red and gray are the areas which a hookah would be allowed within the City so long as they were not within the distance rings. Smyth pointed out the areas on the overhead projector.

Smyth stated that Council discussed hookah lounges at their April 6th meeting and directed staff to draft an ordinance based on the City of Santa Cruz example as they liked the format. She stated that some of the things Council found that the Santa Cruz example did not have but asked to include in our draft were sections on age restrictions, posting and providing information regarding the hazards of hookah smoking. She stated that Council asked that the use be located a reasonable distance from schools and sensitive uses, background checks be required of owners and that the hookah lounges provide more security should the use cause a high number of calls for service. She noted that the map does not reflect distances from residences, which staff added to the Santa Cruz ordinance to address Council's sensitive uses.

Smyth stated that as far as the operational requirements in the ordinance listed as F1 through F5, are what the Council brought up directly and F6 through F16 are those items that were in the Santa Cruz example ordinance. She stated that what Council directed staff to draft an ordinance based on this model and bring back to Commission to discuss further modifications they want to make. Smyth stated that the ordinance brought before you includes those items not included in the model ordinance and what staff felt should be included based on Council discussion.

Smyth noted that this item was noticed in the newspaper as a public hearing.

Chairperson Kendall opened the Public Hearing at 7:10 p.m. and asked for testimony in favor of the Hookah lounges ordinance. There was none.

Kendall asked for testimony in opposition of the item.

David Brown of 89 Devon Drive stated that he and his wife oppose the hookah businesses. He stated that the population of Santa Cruz is larger than Lemoore. He stated that he opposes hookah lounges and once you create that you may be locked in to the 500 foot radius unless the business closes. He stated that the clientele that it might bring into town maybe problematic and he feels approving this is not a good idea and he does not think we need this kind of business. He asked what type of revenue is this type of business going to bring to the City? Brown asked what is the City's function and hope by bringing in this type of business? He stated that he heard this was a type of smoking through a pipe with water and he is not in favor of it. He said that he is concerned about keeping kids out of there. He asked about the age limit right now its twenty-one years. Brown stated that this town is not ready for this. He asked if they would need a license to operate to sell tobacco or are people going to bring tobacco in? He stated that if the city wants to bring in business in this town and keep people and families here he does not think this is the way to go, we don't need this kind of revenue. He stated that he moved to Lemoore in 2005 because of his job and he and his wife like it here and they like the small town atmosphere. Brown stated that now we're bringing this in, we have massage parlors, and he is a homeowner and he pays his taxes and we don't need this here and he has friends that feel the same way.

Janet Gruchacz of 862 Dublin Drive stated that she would like to reiterate what Mr. Brown said. She asked what kind of community are we trying to develop in Lemoore and this needs to be concerned. She stated that she loves Lemoore but this is not the kind of thing she wants to bring into town for her kids to grow-up with on the street corner. If we want to draw big businesses they may be bringing their employees and their families to live here and is this what we want to have here. She stated that this last weekend this town raised \$180,000 to fight cancer through the relay for life and are we going to turn around and encourage people to pay to go expose themselves.

Chairperson Kendall closed the public hearing at 7:15 p.m.

In response to Elgin's question regarding having this in mixed use, Smyth stated that as an example Jasper's is one of the possible areas that they were discussing previously and the general plan is mixed use for this area.

Marvin asked if we have gotten any request for business permits. Smyth noted that we had a person looking into possible lease at the Jaspers building for hookah. Elgin noted that under this ordinance Jaspers would not be eligible because of the 1,000 foot rule. Elgin stated that she is guarded about having them in mixed use because we don't really have a good feel for mixed use until we have the new zoning ordinance in place.

Kendall asked what is the other option? Smyth stated that there are some districts that limit them further as in sexual oriented businesses. As an example Smyth stated that sexual oriented business are only allowed in light industrial areas. She stated that it's up to the purview of the policy makers.

Kendal stated that in the beginning of the report you said prohibit it completely, allow it with some restrictions and this one allows with quite a few restrictions. Smyth stated that we had one Councilmember that did not want to restrict it, one that wanted to prohibit it and three that liked the Santa Cruz example and directed staff to start with that one. Kendall asked if our recommendation has to be approved by the Council? Smyth stated that they would have to have a public hearing as well and then adopt.

Clement asked for clarification that one of the choices is to reject and it does not have to be passed. Smyth stated this is correct. Smyth stated that one ordinance defined what hookah was and said this is prohibited throughout the city. Norgaard said this option sounded good to him. Kendall stated that the direction received from City Council was to draft this ordinance based on the model and so prohibiting might not be passed by the Council. Smyth noted that no public hearings were noticed for the study sessions previously on this item.

Clement asked Chief Laws for his perspective on this. Chief Laws stated that all he knows is that in Fresno, it has caused them a substantial amount of calls to the point that they had to hire off duty police officers to work up there in the evening. There have been a couple of shootings, fights, disruptions and those kinds of things and not to say that this doesn't happen at regular bars, we have had this discussion the last time and we've had

those type of things happen at the Granary and Adolpho's. He said when you get a large amount of people in a small confined space you have these kinds of problems. They were draining the city's resources and that is why they hired the off duty police officers. Clement asked if there was additional information since the last time Laws talked to the Commission. Laws stated that it's as it is still a new thing which there is about 80 in the state.

Norgaard asked if it would be fair to say that there is no redeeming value in allowing a hookah bar. Laws stated that he personally and professionally can say that he does not see any value. But someone can come up here and make a case that there is a purpose for it. Laws stated that we were on the cutting edge with the marijuana ordinance which limits the amount of clientele a business can have and they have skipped Lemoore because of the regulations. He stated that they revisited the police department recently implemented a massage ordinance which shall be effective the first of May. Laws stated that the Commission and Council have done good and he is sure they will make the right decision and they will police whatever is given to them.

Norgaard asked if we take the position not to allow it, are we going to face a legal battle and have a lawsuit that we can't defend because we are infringing on someones opportunity and rights to have a hookah bar. He stated that this is the only reason why you would want to even entertain allowing someone to have a hookah bar. Laws stated that he can not answer that, he is not a lawyer but he can image that anyone can contest it and sue you for not allowing it and if they win or not he does not know.

Smyth stated that Dale Bacaigulpi's office provided the examples which included the prohibiting ordinance. She stated that she does not think he would have sent it our way unless he thought it was a valid ordinance that could be copied, pasted and modified to fit Lemoore's format.

Norgaard stated that Council wanted to copy Santa Cruz, they are larger then Lemoore and they allow two and the most we should allow is one if you went by porportion. Smyth stated that she is assuming that by having two you don't have any favoritism toward one businesses but she is not sure and will double check.

Clement stated that this could potentially be in an enviroment where there is alcohol; so an 18 year old is allowed with adults. Laws stated that this is true and someone can slip something in there and you don't have anyone monitoring what goes in the pipes and whatever happens happens. Smyth stated that item F6 would not allow food or beverage services at the same establishment as a hookah establishment.

Elgin stated that as part of the CUP is there a way to put some teeth into it to maybe have three strikes or times called out there, we can pull the CUP and/or maybe restrict hours. Laws said that the one in Fresno is open from 6 p.m to midnight or 2 a.m in the morning. Smyth stated that in most cases unless written in the ordinance if you had a violation the CUP can be revoked. Smyth stated that she has never seen a CUP revoked.

Kendall asked who enforces that? Do we expect the police department to go in there? Smyth stated that usually the Planning Department makes sure conditions of approval are met before opening but and other than that it's on a complaint basis coming from the community. Kendall stated that this is kind of after the damage is done, you set up a business that is prone to problems and draining police resources. She stated that she would personally stop the problem before we let the horse out. Kendall stated that if we don't pass this because we don't think its restrictive enough and rather prohibit hookahs all together, and the Council is not willing to take that recommended position, then we have no ordinance on hookahs. Smyth explained that the public hearing will be on whatever comes out of this meeting this evening and we republish what the Commission's recommendation is and Council will consider this recommendation on that item at their public hearing.

Meade stated that the City of Santa Cruz has approximately 50,000 people and he thinks it is a stretch at the very best to say there is any comparison between Santa Cruz and Lemoore probably a bigger stretch between Kings County and Santa Cruz county. He stated that the population is totally different and extremely influenced by University of California Santa Cruz. He does not know how the Santa Cruz ordinance really plays into this because we are so far apart it is unbelievable. He stated that he is surprised they only allow two in Santa Cruz.

Meade asked for clarification on F6 and F9. He asked what is the definition of food and beverage service in this ordinance? He stated that as far as he knows no establishment could prevent the aquisition to water, that is a beverage. He asked if there is absolutely no sustenance that is considered food and beverage allowed within these four walls? Smyth stated that it sounds like it would be no unless you define beverage that it does not

include water. Meade asked what is the rationale of the midnight hour in F9. Smyth stated that this is what was in the Santa Cruz example. Meade asked aren't most bars open until 2 a.m? Meade stated that publicly he is not in favor of hookah bars, but he is not in favor of the over regulation that he sees in this ordinance. He asked what is the regulatory function that we are looking at here and this is extremely over regulated as far as he is concerned.

City Manager Briltz stated that our existing legislation is completely silent on hookah. He stated that what is before you is how do we deal with it in the future. He said no one is trying to bring in a hookah parlor and this isn't a revenue generator and has nothing to do with the City. He said that we basically regulate to the extent that we can. Briltz stated that he agrees entirely that there is nothing in common with Lemoore and Santa Cruz. The Santa Cruz model was chosen because it was one of three options that the City Council reviewed and it was very restrictive. It was regulated but it didn't totally preclude it. He stated that there was no discussion about the details. Briltz stated the Council felt this model was the best one to start with. Briltz stated that you can change and modify the draft ordinance it fit our population.

Norgaard stated that he does not want a hookah bar. Briltz stated that the City Attorney advised the Council that if they could make the findings they can prevent it. Briltz stated that 4 of the 5 didn't want to prevent them entirely. Briltz stated that you can send a message by sending an ordinance that isn't modeled after Santa Cruz. He stated that as you recall your direction was take it to Council and find out what they wanted to do and Commission would take it from there and this is what we did. Kendall stated that we can modify this ordinance to fit Lemoore, or tell the City Council we don't want hookahs, or accept the ordinance as it is.

Meade stated that he could not support this with F6 and F9 as they are delineated. Clement stated that he still has a hard time grasping the fact that we are comparing Lemoore to Santa Cruz. Elgin stated that she does not want to totally prohibit them but she is all for restricting it heavy in the beginning and if it works out the owners can request restrictions to be lifted later, but she is all for being restrictive in the beginning. Kendall stated that she would like to prohibit it completely. Elgin stated that if we restrict and regulate it some operators may find it difficult to come into town. Elgin stated that she does not want to end up with the same problems Fresno has and they only have two.

Meade stated that given the areas of the city that would be suitable for this, he does not see the chance of success as being very great, having said that we should not exclude business because we don't like the brand of soap they sell.

Marvin stated that he agrees with Meade that this is over regulated. He stated that he agrees with the lady for relay for life and Mr. Brown but how can a place that smokes legally be worse than a bar. Laws stated that any time you have a lot of people in a small confined area you have problems especially if you have alcohol. He asked Briltz if he would expect that there would be a lawsuit if we just said you can't come. Briltz stated that we need to ask the City Attorney to help the Council develop findings, in other words the City Council has to make a finding to support the regulations so if the regulation you recommend to prohibited or as prohibited as possible those are the findings we would begin to craft.

In response to Norgaard's question giving the Commission the opportunity to prohibit this, Briltz stated that you can make a motion right now to say that I would like to make a motion to recommend to the Lemoore City Council to define hookah and then prohibit in all zone districts.

It was moved by Commissioner Norgaard, seconded by Commissioner Clement to have Bacigalupi to provide an ordinance to define hookah and prohibit it in all zones of the City.

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

Motion failed, 3 to 3 vote.

Marvin stated that if we were to take off the entire F section and pass it on to the City Council and let them rastle with it. Meade stated that we have legal requirements in the ordinance and it is already law that are being discussed in F so that we can't remove all of them.

Smyth stated that Council actually recommended F2, F3, F4, and F5 is State Law and F1 talks about State Law. She stated Council has asked for F1 through F5.

Marvin asked if F6 through F16 can come out. Smyth stated that the only other thing that Council didn't give direction on is the zone districts. Kendall stated that she does not know why Marvin would like to take out F6-F16 because these are requirements include parking standards, fire department regulations, some of those things are needed in the City of Lemoore.

Meade stated that the only two provisions he can not support are F6 and F9. Clement asked Chief Laws if he was in full force with officers and if the budgets had impacted him. Laws stated that they are down two that retired that are not be re-filled. Clement stated that without a doubt the establishments/bars are a drain on the resources. Laws said that any place you put a lot of people in confined space you have problems. Clement stated that your resources get drained. Laws stated yes. Clement asked if it is true to say that Fresno has a lot of drain on their resources because of the calls to hookah bars. Laws stated that is correct. Laws stated that he also recently heard that the military was looking into banning military personnel from going to hookah bars. If they do ban it it will be a lot less popular.

Marvin stated that if we were to remove F6 and F9 and ship it on, the City Manager said that four of them want an ordinance that will allow them seems like we are bashing our heads together and if they want it then we sent our message.

Elgin asked how far does a bar have to be away from residential use. She asked why does it say 1,000 feet away from a park or school but they can be 500 feet from residential. Smyth stated that Santa Cruz model didn't mentioned residential buffering at all and so her concern was if you didn't have any residential spacing you could put it next to single family resident, especially where it is next to mixed-use districts. Elgin stated that she would be willing to pull F9 if we extended the buffer to be 1,000 feet from a residential use. She stated that if they are going to be opened all hours of the night they are going to have loud music and people loitering in the parking lot and she would like them away from residential uses. Smyth stated that a 1,000 radius away from residential uses would eliminate potential hookah sites almost everywhere in town except maybe towards highway 41 and bush or in the south industrial park.

Kendall asked if without item F6 is there anything prohibiting them from serving alcohol. Smyth stated that once they get an ABC permit, no.

Clement stated that the allowable area by Bush and highway 41 would give people traveling on 41 an image of Lemoore as a hookah bar.

Meade stated that his opposition to F6 is that people would not be allowed to have a glass of water or soda and that is a very serious regulation that he does not think that this body or City wants to go near. Smyth stated that we can modify F6 to read "alcoholic beverages" which would allow other drinks.

Meade asked which other business does the City regulate to close at 12 midnight? Briltz stated that the tatoo parlors are regulated through the Conditional Use Permit (CUP) to usually be closed by 10 p.m.. Smyth stated that the draft ordinates would require going through a CUP process.

She stated that so far we have three Commissioners that state that you would prefer #9 be stricken and that F6 be modified to read "prohibit food and alcoholic beverage service".

Elgin asked if Meade and Marvin have a problem removing F9 and having hours determined go through the CUP process. Meade said he does not want to see an ordinance or regulation on any type of business, has nothing to do with this business. Marvin stated that we have discussed this to death and the Council's going to make a decision on it anyway and none of us want hookah parlors here, its how we are going about it.

Kendall asked Clement and Norgaard if there are any circumstances or changes that could be made to this ordinance that would persuade them change their vote.

Clement asked if it is possible to table this and have Dale come here. Smyth stated that Jerry Berens would be our representative. Clement stated there is a concern on where we stand legally. Elgin asked if we can get a written statement from the Attorney to see how we stand legally on whether or not it can be prohibited.

Briltz stated that there is one other option, there is a reason you have seven people but you are missing one tonight to break the tie. Briltz stated that the Council is asking you to make a policy call and they will deal with the legal provision if there is one. He stated that if your policy call is to prohibit them all together that is why we have a City Attorney to figure out a way to make that happen but if it is to follow the sample ordinance with modifications then that's also a policy call. He stated the reason you have seven people on the Commission is for this reason and it would have made a difference once way or the other.

It was moved by Commissioner Norgaard, seconded by Commissioner Clement to table this item to the May 10th meeting.

Meade asked if the labeling of this issue is so 1) we can have a legal opinion that this is legal or not, or 2) we have a seventh member of the Commission so we can make a decision if no one abstains. Smyth stated that sounds like the second one. Kendall stated that we can have a legal opinion. She asked Norgaard if he wanted to include this in his motion and Norgaard stated yes.

It was moved by Commissioner Norgaard, seconded by Commissioner Clement to table this item to the May 10th meeting.

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

It was noted that there is an audio if anyone wants to listen to Council's meeting available on the City website tied to the Planning Commission's April 26<sup>th</sup> agenda.

#### **Planning Director's Report:**

Smyth reviewed activity report and pointed out that the building report is also included. She stated that the kick off meeting on May 18<sup>th</sup> for the update of the zoning regulations will start at 5:15 p.m.. She stated newsletter mailings will be going out with the water bills and a separate mailing of owners of vacant lots.

Marvin asked about the rail committee meeting in Tulare. Smyth gave a brief summary of the meeting. Marvin asked for a copy of the minutes the meeting.

#### **Commission's Report and Request for Information:**

There was no request for information.

**Adjournment:** The meeting adjourned at 8:20 p.m.