



## STAFF REPORT

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**MEETING DATE:** August 12, 2024

**PRESENTER:** Manuel Campos, Assistant Planner

**SUBJECT:** Public hearing regarding a second modification to Conditional Use Permit 2017-07 and Conditional Use Permit 2024-04 to allow for bimonthly outdoor events, karaoke in conjunction with existing alcohol sales, and outdoor grilling activities for the business located at 651 S. Madera Ave., including adopting findings of a Categorical Exemption under Sections 15301 and 15304 of the CEQA guidelines. (MC)

**RECOMMENDATION:** Commission conduct a public hearing, deliberate, and by motion:

1. Adopt a resolution approving Conditional Use Permit 2017-07 MOD 2 to allow for karaoke in conjunction with existing alcohol sales for the business located at 651 S. Madera Ave., including adopting a finding of a Categorical Exemption under Section 15301 of the CEQA guidelines; and
2. Adopt a resolution approving Conditional Use Permit 2024-04 to allow for bi-monthly outdoor events and outdoor grilling activities for the business located at 651 S. Madera Ave., including adopting a finding of Categorical Exemption under Sections 15301 and 15304 of the CEQA guidelines

**EXECUTIVE SUMMARY:** Conditional Use Permit (CUP) 2017-07 MOD 2 and CUP 2024-04 was filed by Rigoberto Yanez, applicant; on behalf of Abdul Hussein, property owner; requesting approval of a CUP and CUP modification to allow for bimonthly outdoor events, karaoke in conjunction with existing alcohol sales, and outdoor grilling activities for the business located at 651 S. Madera Ave., Kerman CA, zoned CG (General Commercial) with a GC (General Commercial) General Plan land use designation (APN: 023-148-10S). A Categorical Exemption under sections 15301 and 15304 of the California Environmental Quality Act (CEQA) Guidelines will be considered for the Projects.

**APPLICABLE CODES AND PROCEDURES:**

KMC 17.12 – Commercial, Office, and Mixed-Use Zones

KMC 17.50 – Alcohol Beverage Sales Uses

KMC 17.84 – Conditional Use Permit

KMC 17.94 – Permit Modification And Revocation

Public Resource Code – CEQA 15301 – Existing Facilities

Public Resource Code – CEQA 15304 – Minor Alterations To Land

The Kerman Municipal Code (KMC) allows the Planning Commission (Commission) to grant or deny approval of a conditional use permit provided that a public hearing is held on the proposed use to review and consider any public testimony. Prior to the public hearing, a staff report, environmental determination, and general plan findings for the use permit must be made available to the Commission, interested agencies, and the public.

The use should be denied if the Commission cannot make the appropriate findings. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered, and site improvements may be required to make the project compatible with nearby uses. In addition, the application may be subject to future review, modification, or revocation by the Commission, as deemed necessary.

## **ANALYSIS:**

### **Background Information**

The site has been developed with an approximate 2,392 sq. ft. building formerly operated by Lucero Carniceria and Taqueria Market, and The Den Smokehouse and Brewery. The Commission approved CUP 2017-07 in favor of The Den Smokehouse and Brewery on December 11, 2017, allowing the manufacturing and sales of beer consistent with a Type 23 (Small Beer Manufacturer) ABC License. On August 14, 2023, the commission approved a modification to CUP 2017-07 in favor of Kerman Country Café, allowing the restaurant to have alcohol sales consistent with a Type 41 License (On-sale Beer & Wine).

### **Project Proposal**

The applicant is seeking approval of a CUP modification and a CUP to allow for bimonthly outdoor events, karaoke in conjunction with existing alcohol sales, and outdoor grilling activities for the business located at 651 S. Madera Ave.

Karaoke is proposed within the restaurant's dining area every Friday and Saturday from 8 PM to 12 AM. A speaker will be the only equipment associated with the karaoke machine. The business currently conducts alcohol sales between the hours of 8 AM to 11 PM, seven days a week. The establishment will extend its hours of operation and alcohol sales by an hour due to the karaoke. With the Type 41 license restaurants are authorized to sell beer and wine for consumption on or off the premises. It is not uncommon to see these distinct uses being used in conjunction. Adding karaoke operations will require the business to contact the State Department of Alcoholic Beverage Control about this modification. Approval or denial of this CUP application will not modify the business's current license type.

The applicant intends to hold outdoor events every other month in the parking area to the north of the building (see exhibit 'A-1'). These events will consist of a dance floor, dining tables, and outdoor music and will occur in a day. The event area with warning tape and cones will isolate the event area from the general public. The applicant can select the event days but can hold six (6) events in any given year. As conditioned the applicant at no cost is required to submit a temporary use permit application to the Planning Division for the consideration of an

event at least three (3) weeks before the desired event date. Staff will analyze each application submittal thoroughly to ensure consistency with CUP 2024-04. Outdoor dining will occur as a result of these proposed events, however, the sale and consumption of alcohol will be contained within the building.

The applicant proposes to operate a barbecue grill daily consistent with the restaurant hours of operation within a 600 sq. ft. enclosed patio that abuts the west side of the project building (see exhibit 'A-1'). This proposed grilling operation is slightly different from other operations (CUP 2023-09 and CUP 2023-11) previously approved by the Commission as it will not be visible from the public right of way. Furthermore, the proposed grill is an extension of the restaurant's kitchen. As conditioned the applicant will be required to secure approval from the Fresno County Environmental Health Division and the North Central Fire Protection District before commencing outdoor grilling activities.

#### Site and Surrounding Land Uses and Setting

The project site has been developed with a 2,392 sq. ft. building and ten (10) parking stalls designated to serve the restaurant, with most of the site's parking being serviced by street parking. The building has a single dining area with booths and tables, restroom facilities, and a kitchen.

The site is surrounded by developed land. As described in Table 1., the site is surrounded by an auto repair shop to the north, a public street to the east, an in-line tenant suite to the south, and City public parking and park facilities to the west. As conditioned it is anticipated that the proposed uses will not be injurious or detrimental to properties in the surrounding vicinity.

**Table 1. Existing Land Uses, General Plan Designations, and Zone Districts of Surrounding Properties**

Location	Existing Land Use	General Plan Designation	Zone District
North	Auto Repair Shop	GC – General Commercial	CG – General Commercial
East	Public Street	-	-
South	Business/Admin. Services	GC – General Commercial	CG – General Commercial
West	Park/Public Parking Facility	P – Parks and GC – General Commercial	O – Open Space and CG – General Commercial

#### Zoning & General Plan

The site is zoned CG (General Commercial) with a GC (General Commercial) General Plan land use designation. The CG zone district is intended to allow for a wide range of commercial and office uses which are diverse, visually pleasing, convenient in terms of parking and access, attractive, and used by citizens of Kerman as well as visitors to the area. A restaurant is a use permitted by right, however, bimonthly outdoor events, karaoke in conjunction with existing alcohol sales, and outdoor grilling activities are subject to conditional approval. Approval of the

previously mentioned uses will be consistent with the CG zone district and the General Plan land use designation.

#### Other Department Comments

The project proposal was distributed to the Kerman Police Department (KPD). The comments and recommendations of the KPD have been incorporated into the recommended conditions of approval included in this report.

#### Conclusion

Bimonthly outdoor events, karaoke in conjunction with existing alcohol sales, and outdoor grilling activities are permitted uses subject to a CUP. No evidence suggests approval of the CUP would be detrimental to the public, health, safety, and welfare of those residing or working nearby. To ensure the continued compatibility of the site with surrounding uses, conditions of approval have been incorporated that address typical concerns associated with establishments that provide indoor karaoke, operate an outdoor grill, and expand business activities to the exterior of the building.

#### **APPLICABLE GENERAL PLAN POLICIES**

The 2040 General Plan includes policy recommendations related to the various physical development aspects of the community. A set of goals and objectives supports the policies. When deciding on this request, the Planning Commission shall refer to the General Plan's policies, goals, and objectives.

Through the project and development review process and in collaboration with other City departments and outside agencies, the project has been designed to comply by and large with the City's General Plan goals, policies, and objectives. Approval of the proposed uses will directly or indirectly provide compliance with the General Plan. Below is an excerpt from the General Plan that is germane to this conditional use permit request:

**ED-1.1 Increase Business:** The City shall strive to increase the number of businesses operating in Kerman to satisfy the routine needs and dining, services, and retail desires of residents while also increasing sales, property, business, and potential transient-occupancy taxes.

**ED-1.4 Downtown Shopping and Entertainment:** The City shall work with Downtown businesses, property owners, and other agencies to improve circulation, parking, pedestrian facilities, and food service options to help promote increased shopping and entertainment opportunities.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the Commission make findings and determine that a Class 1 Categorical Exemption (Existing Facilities) outlined in CEQA Guidelines Section 15301 and a Class 4 Categorical Exemption (Minor Alterations to Land) outlined in CEQA Guidelines Section 15304 applies to the projects. Class 1 applies to the Projects as it consists of the use of an existing private facility on an existing site. Class 4 applies to outdoor grilling activities as it consists of

the minor temporary use of land that will have no permanent effect on the environment. Additionally, no expansion of the building is proposed, and any maintenance or alternation of the building structure would be minor, and would not result in a significant, adverse impact on the environment. Furthermore, none of the exceptions outlined in CEQA Guidelines Section 15300.2 apply to this Project.

**PLANNING COMMISSION FINDINGS:**

Due to operational characteristics, conditional use permits are required for certain uses within each zone district to minimize impacts upon surrounding uses. In considering a conditional use permit, the Planning Commission must make certain findings pursuant to Section 17.84.030 (D) of the KMC.

- A. That the proposed establishment, maintenance, and operations of the use applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the city;

Finding A (1). The project will not be detrimental to public health, safety, or welfare It is located in a designated general commercial corridor with conditions of approval that will minimize any potential negative impacts to adjacent land uses. The conditions of approval for each entitlement application will limit the types of uses that may be objectionable or detrimental to other permitted uses or adverse to the public interest health, safety, convenience, or welfare of the City.

- B. The proposed use is consistent with the General Plan, Zoning Code, applicable Specific Plans, and other City policies or programs;

Finding B (1). Bimonthly outdoor events, karaoke in conjunction with existing alcohol sales, and outdoor grilling activities are permitted uses subject to a conditional use permit in the CG (General Commercial) zone district, which is a consistent zone with the General Plan GC (General Commercial) land use designation. The Project is consistent with the General Plan, including General Plan objectives ED-1.1 and 1.4.

Finding B (2). The Project is located along a general commercial corridor suitable for many retail, business professional, service commercial, and other similar activities and uses.

Finding B (3). The conditions of approval preserve the integrity and character of the zone district and ensure compliance with the General Plan and Zoning Ordinance.

- C. That the environmental document is prepared as per the California Environmental Quality Act;

Finding C (1). As described in greater detail, above, a preliminary environmental assessment was prepared for this project per the California Environmental Quality Act (CEQA) requirements. The project falls within Categorical Exemption per CEQA Guidelines Section 15301 (Existing Facilities) as the project is characterized as a use occupying an existing structure within a developed site and meets the required conditions described in said section. The project also falls within Categorical Exemption per CEQA Guidelines Section 15304 (Minor Alterations To Land) as the project is characterized as a private alteration in the condition of land that meets the required conditions described in said section. There are no project-specific significant effects on the project or the site which would require additional environmental review.

- D. The site for the proposed use is adequate in size, shape, and location to accommodate the use as it relates to the zones for which the use is proposed;

Finding D (1). The location of the Project is within the CG - General Commercial zone district which is located along a commercial corridor suited for retail, office, commercial services, and other similar activities and uses along the Madera Avenue corridor in a developed parcel of land. The existing alcohol sales have operated harmoniously and demonstrated negligible impact on the surrounding developments. Furthermore, no expansion of the existing building envelope of the site is required or proposed.

**Planning Commission Action:**

The Commission will be acting on CUP 2017-07 MOD 2 and CUP 2024-04 and determine to either:

**Motion 1A:** Adopt a resolution approving Conditional Use Permit 2017-07 MOD 2 to allow for karaoke in conjunction with existing alcohol sales for the business located at 651 S. Madera Ave., including adopting a finding of a Categorical Exemption under Section 15301 of the CEQA guidelines; and

**Motion 1B:** Adopt a resolution approving Conditional Use Permit 2024-04 to allow for bi-monthly outdoor events and outdoor grilling activities for the business located at 651 S. Madera Ave., including adopting a finding of Categorical Exemption under Sections 15301 and 15304 of the CEQA guidelines

**Motion 2:** Move to continue the public hearing on CUP 2017-07 MOD 2 and CUP 2024-04 to a later meeting; or

**Motion 3:** Move to continue CUP 2017-07 MOD 2 and CUP 2024-04 to a later meeting, with direction to staff to return with an updated resolution with appropriate findings for denial of the application(s).

Any action taken by the Commission approving or denying the application(s) is subject to appeal to the City Council no later than ten (10) working days after the day on which the decision was made.

**Attachments**

- A. Resolution CUP 2017-07 MOD 2  
Exhibit "A" – Conditions of Approval
- B. Resolution CUP 2024-04  
Exhibit "A" – Conditions of Approval  
Exhibit "A-1" – Aerial View