

OFFICIAL MINUTES OF THE REGULAR MEETING OF THE SOUTH EL MONTE PLANNING COMMISSION HELD TUESDAY, AUGUST 21, 2018, IN THE CITY COUNCIL CHAMBERS, 1415 N. SANTA ANITA AVENUE, SOUTH EL MONTE, CALIFORNIA 91733 – CALLED TO ORDER AT 6:07 P.M.

FLAG SALUTE:

Planning Commissioner, Gabriella Landeros, led the flag salute.

ROLL CALL:

Commissioners Present – Leo Barrera, Gabriella Landeros, Sara Gaeta-Anguiano and David Diaz. Commissioners confirmed absent-Lorenzo Lauria. Also Present – City Attorney, Stephanie Cao and City Prosecutor: William Litvak; City Manager, Jennifer Vasquez; Assistant Planner, Ian McAleese and Interim Department Secretary, Angie Rodriguez. Arriving in the audience 45 mins later was Code Enforcement Officer: Joe Martinez.

APPROVAL OF AGENDA:

Motion made by Commissioner Diaz and seconded by Commissioner Barrera to approve the agenda as is.

Vote: Approval of Agenda / VOTE: 4-0
Ayes: Barrera, Landeros, Diaz and Gaeta-Anguiano
Noes: None
Absent: Lauria
Abstain: None
Action: Approved

PUBLIC PARTICIPATION: None

CONSENT CALENDAR:

1. Minutes of June 19, 2018

Motion made by Commissioner Diaz and seconded by Commissioner Landeros to approve Consent Calendar Item #1 (Minutes of June 19, 2018)

Vote: Approving Consent Calendar – Minutes of June 19, 2018 / VOTE: 4-0
Ayes: Barrera, Landeros, Diaz and Gaeta-Anguiano
Noes: None
Absent: Lauria
Abstain: None
Action: Approved

PUBLIC HEARINGS: None

Chairman Barrera: This is the time and place for a hearing to consider the violation of the conditions imposed in Conditional Use Permit 17-06 allowing the operation of a Massage Parlor located at 9661 Garvey Ave #105-106. Assistant Planner: Has the applicant been duly noticed of this hearing?

Assistant Planner: Yes. May 10, 2018 a certified letter was mailed out to the applicant informing them of the violations that have been observed and the intention to revoke their massage establishment permit. On June 14, 2018 the City sent an additional notice to the applicant of this Planning Commission Meeting being held on June 19, 2018. The notice included the staff report, a copy of the imposed resolution, a request for additional time to prepare for the hearing that was submitted on June 19, 2018. On August 16, 2018 I sent an email to the applicant with the staff report and resolution informing them about the meeting being held tonight, as the Planning Commission continues the item today to respond.

GI. CONSIDERATION OF REVOCATION FOR CONDITIONAL USE PERMIT (NO. 17-06) FOR MASSAGE PARLOR LOCATED AT 9661 GARVEY AVENUE #104-105

This item was continued from June 19, 2018 Planning Commission Meeting

Lavender Massage located at 9661 Garvey Ave #104-105 which is in the Victory Shopping Center and adjacent to Adelia Avenue. On May 17, 2017 the Planning Commission approved a Conditional Use Permit to allow the operation of a massage parlor. The applicant, Philip Killgore has violated several conditions along with the City's municipal code. The City issued a Conditional Use Permit to allow the establishment of a massage parlor in the existing commercial center. Between May and February there were three inspections conducted on the premises, a total of 8 citations were issued between the three visits. It's been determined that the applicant violated at least four conditions of approval and operated the business outside the scope of the Conditional Use Permit. The scenario of the violations is such that staff recommends the Planning Commission revoke the CUP. The four conditions that were violated were:

Condition #6 - "All employees performing massages shall be certified massage therapists in good standing by the California Massage Therapy Council, pursuant to the Massage Therapy Act (Cal. Bus. & Prof. Code § 4600 et seq.). The massage establishment shall hold at all times a valid business license and massage establishment permit from the City, pursuant to South El Monte Municipal Code Title 5 and Chapter 5.22."

Condition #7- The City must be notified on any change in employment of massage therapists at the property, whether the employment of new therapists or when therapists cease to work at the above mentioned massage parlor.

Condition #8 -"The applicant shall provide an updated list of all massage therapists and copies of their licenses quarterly to the Community Development Department to ensure full compliance."

Condition #9 -“The massage establishment and all employees performing massages shall comply with all applicable State and local laws and regulations, including without limitation the Massage Therapy Act (Cal. Bus. and Prof. Code § 4600 et seq.) and South El Monte Municipal Code Title 5 and Chapter 17.41.”

On each of the three visits, Code Enforcement observed people at the business offering massages who were not certified with the California Massage Therapy Council (CAMTC) which violates Conditions 6, 7, and 9. Since the CUP was issued, Applicant did not submit a list of all massage therapists and copies of their licenses in any of the 4 quarters that have passed since May of 2017 which violated Condition 8

Code Enforcement visited the Site on four separate occasions and observed violations of the CUP and illegal activity taking place. The Applicant was advised to cease illegal activities and comply with the conditions set forth in the CUP. During the first visit on September 28, 2017, Code Enforcement checked the licenses of all persons offering massage at Site and issued Administrative Citations to two people who did not have CAMTC certification or a business license with the City. The second visit on February 22, 2018, another check of licenses was conducted and three more people were cited for no CAMTC license or business license. February 27, 2018, a third inspection was conducted and another two people were cited for not having CAMTC certification or business licenses. The last inspection was conducted the next day on February 28, 2018 along with the Building Inspector to verify that no illegal construction had been conducted on the Site.

Sherriff's Department conducted an inspection with Code Enforcement on September 28, 2017 and observed an employee, agent, or independent contractor offer to perform a sexual act in exchange for compensation. The individual was arrested and charged with solicitation of prostitution. When the individual appeared in court, the District Attorney dropped the prostitution charge and the individual was only charged with operating without CAMTC certification. A second inspection was conducted along with Code Enforcement on February 27, 2018 but no arrests were made at this visit.

The Applicant is still conducting business at the Site and was recently notified of the violations that have been found and informed that his Massage Establishment Permit is being revoked. On May 17, 2018, the Applicant submitted an appeal letter requesting a public hearing in regards to this revocation. Currently a date is being set up to appear before a hearing officer to address the Massage Establishment Permit.

Staff believes that the evidence presented warrants revocation of the Conditional Use Permit. In general, uses permitted through a Conditional Use Permit have the potential to be incompatible with the surrounding uses and a nuisance. Conditions of approval are designed to mitigate adverse impacts to the surrounding community and to ensure that the use is not:

- Incompatible with surrounding uses;
- A nuisance;
- An adverse impact on neighboring properties; or
- Detrimental to the health, safety and welfare of the City and its residents, business owners and visitors.

In sum, the evidence presented at the public hearing establishes that the proposed use has operated in a manner as to interfere with the normal use and enjoyment of surrounding properties; detrimental to the health, safety and welfare of the City and its residents; and in violation of the conditions of the Conditional Use Permit. Therefore, staff is recommending that the Planning Commission consider Resolution No. 18-07 to revoke the CUP.

The attachment A is draft Resolution No. 18-07 for revocation the CUP. Attachment B is the original Resolution No. 17-06 that Planning Commission approved in May of 2017 and Resolution No 17-64 appeal that went before the City Council that was also approved. Attachment C is relevant code sections including 5.22 and 17.41. Attachment D is a copy of all the code enforcement citations, the massage technicians licenses' at the time of inspections, the revocation letter for the massage establishment permit, the incident report that we received from Sheriff's Department and the original conditional use permit application. Attachment E has copies of the letters the applicant has submitted.

Chairman Barrera: Just for the record, I have met with someone from the Massage Establishment Lavender Massage.

William Litvak, City Prosecutor has introduced himself as Special Council representing the City on this particular matter. He is here today representing the Planning Department in support of its' avocation to revoke the CUP that was just identified. I'd like to ask the record to make it clear that Mr. Killgore who is the business owner along with his attorney Frank Weisner are here in the audience and have been since the commencement of the meeting. I would also ask that the staff report that was just presented, particularly the binder that you have in front of you, along with an additional Exhibit entitled Massage Establishment Permit Application which has been provided to you as a supplement. I might also include the documents have also been presented to Mr. Killgore and his council; I believe it was last week, and to have those items made a part of the record of this public proceeding. I would also like to point out the violations of the conditions of the CUP that have been identified- specifically the changes in staff and the failure to identify the changes in staff and the continual failure to supplement that information with the City is not only a violation of the Conditional Use Permit it is actually a violation of the City code relevant to the operations of the massage establishment and I specifically refer to 5.22.080 items G, H and J. Additionally, I'd like to point out that the solicitation of prostitution that has been identified in the record in the form of a police report as well as the supplemental police reports, there is an additional aspect to those reports that I would draw your attention to. As has been pointed out, that prosecution did not result in a conviction but that is not the significance of the violation. One of the factors that is not controverted to my knowledge is that at some point during that massage, the genitalia of the undercover officer was exposed and the narrative suggests that this is a standard or was a standard practice in the manner it was described in the report. That is significant because that is a violation of your operating rules that

specifically precludes the exposure of buttocks or any other private part. So rather than focus on that aspect that has not been substantiated, the more important factor from our perspective is the risk associated with that type of business practice. Which in enough of itself would lead to an event of prostitution. And would conceivably give a customer suggestive information that this was something that is available as opposed to the opposite if the code were followed that it would appear to be as something not welcome at that establishment. Also we'd like to point out; among the information provided are copies of photographs that are followed by reproductions of an advertisement on something called Backpage. Backpage is a website that provides adult advertising and I believe is commonly known to facilitate prostitution. If you will notice the advertisements they reflect what can only be described as advertising illicit services. Under your code, suggestive advertising of this type is expressly prohibited as obviously it would invite illegal conduct, and I wanted to direct your attention to that as well. I also note the citations are attached. And I want to make sure your attention is drawn to that. We do have present, Joe Martinez – Code Enforcement Officer who was present at all the instances when the citations were issued. You will note that they span a period of time. The interesting point there is, that despite the passage of time, the violations continued. So what you have is an environment that gave the appearance of an inappropriate conduct that is suggestive that that kind of conduct is welcome. Further, once the technical or informational requirements to the City were violated rather than abating those violations, they continued over an unspecified period of time. I have asked Mr. McAleese to check, and he can confirm for you that there have not been any updates provided to the City relative to the persons at that location who were ranked in the summons. You must appreciate in your code takes great care to require the reporting so that your City officials can in effect monitor the operations of the facility. And by failing to disclose who is there, it provides the opportunity for the movement of staff and in effect moving them around to avoid being able to protect the public. With that, I and Mr. McAleese are prepared to answer any questions you might have.

Chairman Barrera: Thank you for your insight. My apologies for not introducing you earlier. Any questions for the attorney?

Commissioner Landeros: I have a question, Can you please explain what the incident on September 17, 2017 is or what this additional packet that was received is?

Assistant City Planner: The Massage Establishment Permit application is required by code 5.22 that once a Conditional Use Permit is granted, they will need to file in addition to obtaining a business license. This application is to confirm all the technicians that work at the business along with their certifications.

Commissioner Landeros: I was wondering specifically about the letter for a records request?

Assistant City Planner: This is the background check for the owner of the business, it's required as part of the application.

Commissioner Landeros: So this is accurate criminal history?

Assistant City Planner: According to the letter, Yes it is.

William Litvak: That is the official response provided by the Department of Justice in response to the initial request.

Chairman Barrera: Any other questions? Written and all communications leading to this hearing will be received by the planning commission. All questions and comments on this matter are to be directed to the chair. Questions may be answered by staff at the close of testimony. Mr. Applicant, please make your presentation, How much time do you think you will need?

Applicant's Attorney, Frank Waiser responded 20 minutes.

Frank Waiser: I am the attorney for the applicant. Thank you for giving me the opportunity to present Mr. Kilgore's case. I had the distinct pleasure of meeting Mr. Litvak just before the hearing. We both litigated a case up in the Ninth Circuit which was cited in my appeal letter, it was a published opinion before the Circuit, *The City of Montclair* 798 F3rd 895 Ninth Circuit, I believe 2015. So we know each other, although I've never met him personally. Interestingly enough I'm going to be raising some of the constitutional issues that I raised in that case, and I would ask the permission to bear with me because I do think that the constitutional questions that are presented to you are very important. We have a man's license and his livelihood on the line. And although it might seem that I'm engaging in theoretical issues they aren't. The first thing I'd like to point out is that I did not receive the staff report until just a few minutes before the hearing. Obviously, I think the planning department knew that I was representing Mr. Killgore, because I submitted the appeal letter on his behalf. That has my address and all my contact information. Mr. Litvak, in no blame on his behalf personally, gave me what is called a Massage Establishment Permit Application with the various pictures and documents attached to it, I received that also, only a few a minutes before the hearing. There is a case in the Ninth Circuit that collects the broader principle that the report has stated over and over again is that the procedural due process which has nothing to do with the merits of the case, which means you can have the absolute worst case in the world, but you are entitled as an absolute guaranteed under 14th amendment: Due Process Clause to a notice and an opportunity to heard on the matter when it affects your life liberty or property, a deprivation of life liberty or property. That doesn't mean a standard notice- that means a notice, at a meaningful time, at a meaningful place. I will quote a case, oddly enough I decided to brief the other day with *Buckingham vs. Secretary of US Department of Agriculture* at 603F 3rd 1073108029 circuit 2010 quote: the base requirement of due process clause is that a person deprived of property be given an opportunity to be heard at a meaningful time in a meaningful manner. So I would submit, and I think the case was very clear and I'm sure Mr. Litvak is more than familiar with the case, and presenting evidence just moments before a trial does not give the ability to rebuttal or prepare for in a meaningful manner or in a meaningful time. So I would ask

the Commission for a continuance of this hearing to give me the ability to prepare. Now I heard some remarks that Mr. Killgore may have been sent something, I never received anything, and I think being his attorney of record which I was a while back, staff should have sent me whatever package directly. Now, I never received anything with connection to that. I would ask probably the Commission woe on my request before I get into merits so I don't weigh any issue of procedural due process.

William Litvak: If I may, I just have a question, My understanding is that (addressing Assistant City Planner) Mr. McAleese, this is a hearing that was set in June and at that time there was a staff report as well?

Assistant City Planner: Correct. There is a staff report and resolution.

William Litvak: And that was provided to Mr. Killgore?

Assistant City Planner: Yes.

William Litvak: And could you tell the panel if there were any substantive changes in the report that was rendered in the June meeting and the one provided today?

Assistant City Planner: The only notable change is the dates reflecting this meeting and section 9 was added to the resolution referring to the continuance from the June 19 2018 meeting to the August 21 2018 meeting.

William Litvak: And that meeting was continued by the request of Mr. Killgore?

Assistant City Planner: Correct.

Frank Waiser: I would ask Mr. Litvak, if he has placed in the record the Massage Establishment Permit Application and its' documents attached were part of that original meeting?

William Litvak: I don't believe they were, but I don't believe they address the issues before us. I don't think they provide any argumentative aspect of the matter. I think out of the abundance of caution provided them, as they reflect the applicant's own request for a license. And obviously it's their document, so they would be presumed to obviously know what they said in their own application.

Frank Waiser: Once again, with all due respect to Mr. Litvak, and I do respect him, you know being given that document 5 minutes before I certainly don't know how that ties in to this particular meeting. And I would say that if in fact it does not having meaning that it be excluded from the records. If we can have an agreement on that, perhaps we can move on.

William Litvak: As I have been told many times by many Judges. It goes by the weight, not the admissibility. The fact of the matter is it's a complete record, but it won't directly

address any outcome here because it is the record of what was presented by the applicant originally.

Frank Waiser: So once again, I would ask for a vote on the procedure of due process, I don't know what Mr. Killgore placed in here, I don't know how this is going to be introduced. We say the weight of the evidence, not the admissibility. But once again, weight does go to the substance in merits of the case. So whatever weight is given by the commission that has a bearing on the ultimate outcome, good or bad. So I do think I am entitled to some continuance, if you are going to be introducing some additional evidence. Of what you have in the original staff report. I think it would have been fair. Once again I don't catch any aspersions on Mr. Litvak, I think he is a very fine attorney, but I don't think it's fair to place that in the record without having proper time to prepare for it.

Chairman Barrera: I'm going to refer to the City Attorney: Mr. Litvak ?

Assistant City Attorney: That would actually be my response to that, My name is Stephanie Cao. I am here to advise the Planning Commission on tonight's matter. I hear both the comments, and I thank you for them. However, absent a stipulation between yourself and Mr. Litvak, we are only going to note the objection and then we'll go ahead and move on.

Frank Waiser: Okay, sure. That being said, there was a primary objection that I raised in the appeal letter and it's the case. I think that Mr. Litvak and I actually litigated, as I said before the ninth circuit, the Patel vs. City of Montclair case. And that touched upon and actually referred to another case I litigated before the US Supreme Court and won in the same year 2015. And that's the City of Los Angeles vs. Patel case. So, just to give you a little background because I think it's very, very important to this case in the City of LA vs. Patel case, we, I represented as I do most of my practice, a group of hotel owners in the City of Los Angeles who were challenging on its face, a motel search ordinance that allowed the police to inspect business records, and motel registries of the City, without any kind of a warrant or consent. They simply demanded and could do it under criminal penalty. And it eventually went up to the Ninth Circuit (en banc), we won 7-4 and then the City took us up to the US Supreme Court, the courts gave us a ride , and we eventually prevailed 5 to 4. And the court in the Supreme Court indicated that he cannot compel the disclosure of business records without having some pre judicial review and can be done with any kind of penalty attached to it, if you stand on your constitutional rights, your Fourth Amendment rights. Now in the Patel case, I'm going to refer to it as Patel one. There was one important principle that I think applies here very much so. And that is, the claim was made that the motel industry is a closely regulated industry and as a result of being a closely regulated industry that there were less than expectations of privacy or Fourth Amendment rights. And because of that, the motel owners did not have a right to object and claim that they had the normal type of Fourth Amendment rights that a, let's say a homeowner would have. The Supreme Court rejected that principle and it came out and very clearly defined what is a closely regulated industry. If you read the

case carefully, it says that there are only three or four categories of industries that are closely regulated: Firearms, Liquor Industry, Junk Sales/ Auto Sales. Massage Parlors/ Massage Establishment such as this are not categorized as closely regulated. And the reason for that is, I think the Supreme Court was defining the idea of an extreme danger to the public, like firearms, and that would be something where you would have a less index invasion of privacy or Fourth Amendment Rights and the Government could impose certain kinds of conditions as a result of operating that kind of a business. Now that's not to, in any way depreciate the City's interest in making sure that these kind of established agents run legally. But what I'm saying is I don't think you simply give up your Fourth Amendment rights at the door when you do that. And when we turn to the Patel vs. City of Montclair case. Now, that was an interesting case. It came out right after I won the City of LA case and then Mr. Litvak prevailed on the very major issue. I was trying to extend the City of LA case to Motels and the open areas of Motels, saying that Code Enforcement could not come on, simply to the open area and inspect. I was trying to use rather esoteric doctrine that the Supreme Court had formulated, which is what we call the "Common Law Trespassory tests". Unlike the privacy expectation tests the commonly or Common Law Trespassory Test relies on the fact that the Fourth Amendment enumerates four categories: houses, people, houses, papers and effects. Those four categories were the four principle categories that the founding fathers used in enumerating the test. That if the Government physically intrudes on those four categories independent, whether you have a privacy right to those four categories, that can be a Fourth Amendment violation via searching can be an unreasonable search. So I was arguing in the Patel vs. City of Montclair case that the common areas, the areas open to the public, the parking lot, so to speak. The code enforcement could not come on there and they were trespassing. And therefore it would be a Fourth Amendment violation under that test. The Ninth Circuit rejected that argument and, said no, they are not an effect, the common areas are not an effect and therefore there is no Fourth Amendment right to that. What they did do, and I think it's a very important of a result of that case, is they reaffirmed even in that case, that the private locked areas, the areas that are not simply open to the public, still retain their Fourth Amendment rights. And they reaffirmed it. And I think now I see in hindsight for very good reason that they were not just simply saying that the Government could run roughshod over a business owner by simply saying, I can come onto the common areas. In this case, we've raised the Fourth Amendment objection. All the evidence that was obtained during the three or four visits were videotaped. And I have a flash drive, which I like to introduce as evidence. Mr. Killgore gave it to me and I'm not going to play for you. But it is the four particular times that Code Enforcement, Police or Sheriff's Department came on to the establishment and, it is very clear that they came on there and went into the private areas of the establishment and that the evidence that you have gathered has been without consent, without a court order and that those areas are private and that there is no lesson to expectation of privacy to those areas under Patel vs. City of Montclair. And the case is that it relies upon, one case in particular, Marshall vs. Barlow's Inc., which I'm sure Mr. Litvak remembers, which is a case, an OSHA case, which the Government indicated

going into those kinds of areas. And the Supreme Court, rejected that years ago, 1978. So I would submit that the evidence is not competent evidence and therefore the proceeding to simply revoke Mr. Killgore's license, is not proper before this commission. Aside from the Fourth Amendment argument asking going in and taking those, that information, I would also indicate that the type of information you are saying was disclosed through those searches. Certain, employees disclosing that they did not have or the City finding out that they did not have, supposedly licenses, is business information. And may fall within the scope of Patel vs. City of LA is a business record as an enumerated category under the Fourth Amendment may fall, and I would argue fall is an effect. The effect being under that Amendment means personal property. So you may have business information, it may not be on a piece of paper, it may not be a business record, but it is still in effect of your business and the cases that in the Montclair case and in the Patel case, to show that there's been a long history in the Supreme Court going back to the 1960's. Marshall vs. Barlow's Inc. See vs. Seattle. I cite them in my appeal letter where businesses, commercial establishments do have Fourth Amendment rights. So, once again I submit that, that information that was disclosed to the City is not municipal and therefore that this Commission does not have common jurisdiction to hear with regards to that evidence. Now Mr. Litvak raised an issue regarding the code and advertising. And I'm very sensitive to that and I understand that it may not be a popular opinion, but we also know that I think the case law is very clear that the First Amendment rights come into play in these issues. And whenever I do know that the site that he was talking about, "Backpage" is now closed. But, I don't see how the City can simply say just the inference. And I know that the closure of "Backpage" had a lot of controversy to it and I believe there was a judge here in California at one time was refusing the Justice Department's request to close "Backpage", not because he agreed with them but simply because of the First Amendment rights that were implicated. So I think that if there was some advertising and I don't have anything, I don't see any evidence, actual documentary evidence that was attached here that shows that it was advertised as such and what that exactly include them. But there would be certain First Amendment protections. I don't think you could simply yank somebody's license because they do that. As far as this disclosure of the employees. I do have, and I would like to introduce copies of, I believe these are 11 or so, present licensed employees. All who are working now. And they are, all of the employees who are massage therapists. They are all licensed. Mr. Killgore indicates to me that he did provide a list on several occasions to Angela Chiaromonte who works there at the city. So you should have in the record that these were provided, but I would also submit that compulsory disclosure of business lists are also a very, very touchy Fourth Amendment issue. That range of a wide range of businesses. I'm right now litigating in several cities, a rent agencies were cities are requiring that a land owner or property owner give over the information of who they rent to and who their tenants are. And that's a very, very important Fourth Amendment issue. And I don't think you can compel a business owner to simply disclose that as a condition of their licensing. That's an unconstitutional condition because of what you've asking is that somebody give over and give up their Fourth Amendment rights in order to have that license. And I would

submit that, that disclosure requirement is unconstitutional under the Fourth Amendment. But Mr. Killgore has indicated to me he did try to, in good faith, provide some information to the City. So I don't think that we have a material violation in terms of his CUP. Now on the CUP itself. I was here when Mr. Killgore opposed. A CUP application by another massage establishment upstairs from him. I think it was called King Spa or something Kingdom Spa. This was, I think back in 2017. We opposed that I have at that time I had raised on the record that I had serious doubts about whether your CUP process itself was constitutional because these establishments, at least Mr. Killgore had a legally licensed establishment before you impose the CUP requirement. And I believe he was grandfathered in and to simply add on conditions to him, I think raises also due process issues. So since we are in a particular mode right now where he is now risking losing his license, I'm going to raise it. I don't know if you're. You're whole statutory scheme here that you're relying upon. The violation of CUP itself is unconstitutional and I'm going to object on that basis. Then finally, I want to get to the practical aspects of this case. I don't think the planning report does not say that you are absolutely required to revoke his license or his permit. That is an option that is being given to you. There can be modifications of the permit or some lesser sanctions. If you find there is a material violation of the conditional use permit, I would submit the case law in California, not federal law only - would require that you seriously consider. And in this case not revoke, if you are inclined to sanction him in some way, that you do so without taking away somebody's livelihood. The case, I'm thinking of two cases, one federal and one state: is *Chalmers vs The City of Los Angeles*. Which was a Ninth Circuit case in which the Ninth Circuit said that a person's right to their business, their ability to engage in their occupation is a fundamental due process, right? And so if the Government is going to infringe on it, it has to have very, very, really scant evidence to support doing so. And the other case is *Goat Hill Tavern vs. City of Costa Mesa*. I'm sure your city attorney is already well aware of that case. And in that case, that was, I believe a bar or tavern in Costa Mesa that had a CUP. They were asking for renewal of the CUP. They were denied it. There were allegations of public nuisance. And the Fourth District Court of Appeals in Santa Ana found that it was an independent judgment implied. That somebody with an ongoing establishment, a business that's run for a good many years has invested a lot of money in that business. There is some kind of invested property interest that the Government has to take into effect and weighing and balancing the so called public good, or the danger to the public versus what harm is going to be done to business owner. I would submit this case, Mr. Killgore tells me that he has invested well over \$200,000 in this establishment. He relies upon it, for providing for his family. And I don't think that the allegations here are weighty enough to just simply yank his license, if you are inclined to sanction him. I think you can give him some kind of a modification to his CUP that weighs the consideration you have for the public good but not simply put him out of business. So with that I would submit, and I would also raise an evidentiary objection. We don't have the officer or the, even though I know the administrative hearings don't have the same, evidentiary rules that you have in a court of law. And I'm cognizant of that. But when you have a due process interest like this at stake, I think the

case law is, you do have to have something akin to a trial. You have to have the percipient witnesses who are here or who are going to testify and you have the right to cross examine those witnesses and that has not been introduced. And you can't just simply submit a pure hearsay, to yank somebody's license. So I'm going to raise an objection on that. If the commission has any questions I'd be happy to answer.

Chairman Barrera: Commissioners, we're going to open the floor, if you have any questions for the attorney, Waiser? Any questions for Mr. Waiser? Okay. Any questions at the time? But I guess my question is more for the attorney. Is it Mr. Waiser we're going to ask if there's anybody in the audience that wants to come up and speak on this matter. None seen. Okay. I'm sorry.

Commissioner Gaeta-Anguiano: Real quick. Okay. If I may ask, I believe Mr. Killgore in his response said that he would like to introduce, witnesses on his behalf. Is he prepared to bring any witnesses with him today?

Frank Waiser: We don't have any witnesses today, given the fact that Mr. Litvak gave me this application. I do see that there were some individuals on there who I'm not familiar with. But I haven't had a chance to interview any of those people to see if they are relevant or not. That would be one of the other reasons why I would ask for the continuance. I do want to add one last thing. Yeah. There was some argue that Mr. Litvak made about the fact that one of the incidence, acclaimed incidence, the officer had talked about some exposure of body parts or whatever. But it is very clear that, it was a dismissal of the charge. And once again, due process in the way of evidence, there was certainly a prosecutor who found that there was not enough evidence to charge somebody or to prosecute. So we are relying on, I think it seemed almost like double hearsay here. I don't see how in the world we can challenge that without having the officer here without having somebody that we can cross examine to find out what exactly happened. We certainly can't rely, I think on a report that was rejected eventually by the prosecutor himself as a basis to take away somebody's valuable property. So that would be another objection I would make on the record. Thank you.

William Litvak: Chairman Barrera, we actually do have the officer who issued the citations here and he was present when Mr. McAleese described the violations and the citations which were presented to you in your packet. If he would like to ask questions of Mr. Martinez. We have him here now. He's welcome to inquire again, this goes to the citations. He wasn't present when the arrest was made for prostitution.

Frank Waiser: Mr. Martinez is it?

Code Enforcement Officer: Yes, sir.

Frank Waiser: Hi, You were not actually present when the particular citation of the solicitation charge was made. Actually, you're not a percipient witness.

City Manager: Come on over. We're going to get you on the end.

Code Enforcement Officer: I was actually present that day on the day that the arrest was made with. I did not observe the arrest.

William Litvak: Please state your name.

Code Enforcement Officer: Joe Martinez, Code Enforcement & Public Safety Supervisor. And to answer the attorney's question. I was present that day, but I was not privy to the actual arrest.

Frank Waiser: So you're going on the report that was given to you by the arresting officer.

Code Enforcement Officer: Whatever information the attorney has, I'm pretty sure he can answer that information.

Frank Waiser: Okay. Now in the particular investigation. So at the times you were there at the property, did you have a court order?

Code Enforcement Officer: No Sir.

Frank Waiser: And at that time, how many code enforcement officers or police or sheriffs were with you?

Code Enforcement Officer: At any one of these times, the number of varied. I couldn't give you a specific number.

Frank Waiser: More than five

Code Enforcement Officer: At sometimes yes.

Frank Waiser: Would you say that that would be the average? About five, What would be the minimum?

Code Enforcement Officer: I would say the minimum would be Four.

Frank Waiser: And were any of them wearing, I guess holsters and guns with them?

Code Enforcement Officer: Well the Sheriff's Department Deputies wear their uniforms and we wear our uniform.

Frank Waiser: Okay. And was Mr. Killgore, at any of those inspections?

Code Enforcement Officer: If I'm not mistaken he was present to one. If I'm not mistaken, it might've been the day of the arrest as a matter of fact.

Frank Waiser: And at any of those inspections did you have a court order to go in?

Code Enforcement Officer: No Sir.

Frank Waiser: And was there any prior notice given to Mr. Killgore or anybody at the establishment that you were coming in?

Code Enforcement Officer: No Sir.

Frank Waiser: And when you were there observing the inspections, Did any of the officers, including yourself actually go inside the establishment behind any closed areas?

Code Enforcement Officer: We went into the establishment sir.

Frank Waiser: So those are closed areas, Is that correct?

Code Enforcement Officer: No, they're all accessible. The doors, the lunch room, the lounge or sleeping area. They're all accessible. They're open doors.

Frank Waiser: But that's the lunch area or the lounge area you're talking about?

Code Enforcement Officer: No, the, even the, the rear area, the hallways leading to the restrooms, It's all open area.

Frank Waiser: Isn't there a curtain there?

Code Enforcement Officer: No Sir.

Frank Waiser: So there's no area that would show that it's closed or whatever?

Code Enforcement Officer: No, there's no curtains.

Frank Waiser: And the, were any of the doors locked?

Code Enforcement Officer: No Sir. No, I actually under our ordinance, they're not allowed to be locked

Frank Waiser: So you're saying all the areas were open.

Code Enforcement Officer: Yes Sir.

Frank Waiser: Okay. I would ask Mr. Killgore to come up and testify only as to the scope. I'm not going to ask him or allow him to testify to anything but the layout of the establishment. I would submit that the flash drive that I've given you shows a completely different picture, but certainly Mr. Martinez is entitled, to his description. (*addressing Mr. Killgore*) Mr. Killgore, could you describe the layout of the establishment?

Mr. Killgore: You walk in the front door. There's a desk with the receptionist, off the left.

Chairman Barrera: Can you step up to the mic

Mr. Killgore: You walk into the main door and to the right there is a desk with a receptionist. On the left side is a room with a door that is closed. You go past that, there's a room where the girls are at and that door is open and the girls are inside there. If you turn right, to go down the hall, there's a curtain that closes off the hallway. You walk

down the hallway, the only way you could see anything or any of the things is through the door and walk through it, all the way to the back door and the back restrooms.

Frank Waiser: And you were there with officer Martinez, described that you were there at one of the inspections. Were you presented with any kind of a court order?

Mr. Killgore: No.

Frank Waiser: Were you demanded by any officers that they be allowed to inspect?

Mr. Killgore: I was in my vehicle outside of the business and, an officer walked up to me and told me. He says, are you the owner of lavender massage? I said, yes. He said, come with us. I was ordered out of my car and asked to go into the business. And wasn't presented with anything? No.

Frank Waiser: Did you feel compelled to allow them to inspect?

Mr. Killgore: I told them I didn't want to be. I wanted it. I didn't want to be there. They says, well, you're going to be here or this is this. I was like, threatened at that time.

Frank Waiser: Now the video's observed. The flash drives I've introduced into evidence. How is that taken? Was that a video system used?

Mr. Killgore: Yes.

Frank Waiser: And so was that a regular daily video system that you use?

Mr. Killgore: Yes.

Frank Waiser: And that accurately describes the layout or how the establishment looked at on those days the video was taken?

Mr. Killgore: Yes.

Frank Waiser: And I noticed, and of course the commission will have to, if they decide to look at it, but there was a curtain there. So can somebody just simply go into the back of the establishment?

Mr. Killgore: Not without walking through the curtain.

Frank Waiser: So the curtain is a private area?

Mr. Killgore: Yes.

Frank Waiser: In order to understand, and that would be somebody who was at the front desk. Would you allow somebody to go?

Mr. Killgore: We have a curtain because guests are in the hallway and down the hallway and take shower and stuff and may walk down with a towel or something to go back to the room or something like that. So, It's for privacy and security.

Frank Waiser: Okay, thank you.

William Litvak: May I Ask a question, Mr. Killgore. Do you post than the identities of the masseuses on a wall in the establishment?

Mr. Killgore: Yes.

William Litvak: Why do you do that?

Mr. Killgore: Because it's required.

William Litvak: And is it your intent to keep that information as a secret from the city?

Mr. Killgore: It's all out in the open right there for everybody to see. Anybody can see that walks into the place.

William Litvak: So in terms of being able to identify the persons, is it your understanding that the city is entitled to know who was working at the location?

Mr. Killgore: Absolutely,

William Litvak: And they are free to ask who's working there.

Mr. Killgore: I don't know anything about whether they're free to do or not free to do. All I know is that the things are required to be posted and they are posted.

William Litvak: My question is are you indicating to the planning commission that you in any way refuse to identify who's working at that location to the city?

Mr. Killgore: How can I refuse something if it's on the wall. If it's right out there in the open to be read by anybody walks in. The way it's read and written or something, it says that it has to be or it's supposed to be visible. Okay, so therefore it's right there. Anybody could see their permit as well as they're CMTC certificate. Those are all posted.

William Litvak: Have you ever instructed?

Mr. Killgore: I took them down from the wall today to make copies to bring here, but other than that, they'll be going right back out in the afternoon.

William Litvak: Have you ever instructed anyone to at your business to refuse to tell the city what they're true and correct name was?

Mr. Killgore: I don't know anything about that. No, absolutely not.

William Litvak: So you, you never interfered with them telling people who their name was?

Mr. Killgore: Absolutely not.

William Litvak: Thank you very much.

Frank Waiser: I have one more question for you (addressing Mr. Killgore) Are you trained in law?

Mr. Killgore: Absolutely not.

Frank Waiser: You have an understanding of what the legal requirements are?

Mr. Killgore: No.

Frank Waiser: You understand what the constitutional requirements are?

Mr. Killgore: I'm learning.

City Manager: Excuse me, Can you please use the microphone so our system can pick it up. Thank you.

Frank Waiser: So when Mr. Litvak asked you whether it's required or not, you are not making a legal conclusion?

Mr. Killgore: No.

Frank Waiser: And I would submit and I would make an objection to that line of questioning to the extent that it is asking for a legal conclusion of Mr. Killgore. Certainly Mr. Litvak is entitled to his understanding. My objection was to the legal requirements not to what Mr. Killgore understands his requirements are or not. So what the legal requirements are constitutionally are totally despised from Mr. Killgore's understanding. Thank you.

Mr. Killgore: May I sit down?

Chairman Barrera: Mr. Killgore do you wish to make any further statements or rebuttals before we close the hearing?

Mr. Killgore: No.

Chairman Barrera: Okay. I'll ask the commissioners; Do you guys have any questions for Mr. Killgore?

Chairman Barrera: I have a couple questions. Mr. Killgore, did you say there are showers at your establishment?

Mr. Killgore: There is a shower. Yes.

Chairman Barrera: Is the shower for your patrons or for the workers there?

Mr. Killgore: For the patrons.

Chairman Barrera: Okay. Are you there? Is there a manager onsite? Are you there? First of all, supervising your, your workers there?

Mr. Killgore: I'm there in the evening and I'm there some times in the morning

Chairman Barrera: When we issued the conditional use permit we had asked you clearly if you understand the conditions of approval, you stated clearly that you have read and understood that. But yet, there were numerous violations on numerous occasions regarding the same use of lack of licenses.

Frank Waiser: Mr. Chairman, I'm not going to allow him to even, you know, the blind questions getting admit there were numerous violations. I'm going to ask him not to testify. I mean, your evidence is what it is and I understand you can certainly have your view of it, but I'm not going to allow them to make an admission here. Certainly given the legal characters that we made here.

Chairman Barrera: Understood. Okay. So nothing else you'd like to add Mr. Killgore?

Mr. Killgore: Excuse me. No.

Chairman Barrera: Is there? Okay, very good. Thank you. Thank you. Gentlemen.

City Attorney: And Mr. Waiser, before you sit down, you did indicate you had a flash drive you wish to submit for the record, Can you please pass that on to Ms. Rodriguez

Frank Waiser: I don't know, I have three of them. They're all the same, right Phil?

Mr. Killgore: Yes,

Frank Waiser: Okay, so I'll give you an extra one.

Chairman Barrera: Okay.

William Litvak: If I may, I have one question for Mr. Martinez. During any of the instances when you gave the citations, did anyone refuse to give you their names?

Code Enforcement Supervisor: No Sir.

William Litvak: Did anyone indicate to you that they didn't want to give you their name?

Code Enforcement Supervisor: Not at all.

William Litvak: Were you told that? Did you ask to enter the premises?

Code Enforcement Supervisor: Once we arrived, we introduced ourselves and then we asked, then proceeded to ask for copies of verification of their licensing.

William Litvak: You asked?

Code Enforcement Supervisor: Yes.

William Litvak: Anyone refuse?

Code Enforcement Supervisor: No.

William Litvak: Nothing further, Thank you.

Frank Waiser: Can I just make one comment and it just simply a illegal comment so that it will be part of the record. The rule was very clear that consent is a multifactor test and the Ninth Circuit holds that the way to how many officers are there, how they present themselves, if they have any guns with them, goes to the issue of there's a case called Bunkrow vs. State Arkansas. It's a 1968 US Supreme Court case. Simply because a four or five officers come in and ask doesn't mean that that's consent. That's a determination a, it's a multifactor totality of the circumstances, so I would submit that Mr. Martinez, if you look at the flash drive, I think you'll. One could reasonable trier of fact could get a very different view of what could, what was consented to here or not

Chairman Barrera: Okay. Is there any further statement or rebuttal before the hearing is closed? From anybody? From the applicant? We will close the public hearing.

Chairman Barrera: Okay. The staff wishes to address any questions asked during the course of the hearing?

Assistant City Planner: No.

Chairman Barrera: None seen. Commissioners? Do you have any questions of staff?

Motion made by Commissioner Diaz and seconded by Commissioner Landeros to approve Resolution No. 18-07 revoking CUP 17-06 with operation of a massage parlor located at 9661 Garvey Ave #105-106

Vote: Res. No 18-07 / VOTE: 4-0

Ayes: Barrera, Gaeta-Anguiano, Landeros, Diaz

Noes: None

Absent: Lauria

Abstain: None

Action: Approved

G2. ADOPTION OF RESOLUTION NO. 17-25 APPROVING A CONDITIONAL USE PERMIT (NO. 17-20), WHICH WOULD ALLOW FOR THE DEVELOPMENT OF SIX TWO-STORY APARTMENT UNITS WITH ATTACHED GARAGES.

The subject site consists of two parcels having an area of approximately 11,970 square feet (0.28 acres). The parcels are located on the west side of Adelia Avenue, just north of Garvey Ave at the northernmost border of the City. The subject site is zoned “C-R” (Commercial-Residential). With General Plan designation as “Mixed-Use”. At the present time the site has asphalt covering the lot and is in disrepair. Due to the size of the subject site, all of the development standards in the Commercial-Residential zone can be accommodated on-site.

The subject site is designated as “Mixed Use” in the City of South El Monte’s (“City”) General Plan and is zoned “C-R” (Commercial-Residential) in the City’s Zoning Code. The owner of the property is developing the property for rental apartment units. This use falls within the scope of the General Plan’s “Mixed Use” land use designation and is also a permitted use in the “C-R” Zone. The six apartment units to be located within two 2,520 square foot buildings (“Project”) will help further the City’s goals and objectives found in the General Plan and satisfy all development requirements within the Zoning Code.

Goal 1.0: Maintain a balanced mix and distribution of land uses throughout South El Monte;

Goal 3.0: Accommodate new development that is compatible with and complements existing land uses;

Goal 6.0: Provide for the revitalization of deteriorating land uses and properties;

Policy 1.1: Provide opportunities for housing developments at a range of densities and housing types that accommodate the carried interests and needs of present and future residents.

Considering all of the above, the proposed Project is consistent with both the General Plan and the Zoning Code.

All of the properties to the north and west of the proposed Project are residential with a majority of them comprised of apartments. Directly east of the proposed Project is empty land; and farther east, along with to the south, are commercial centers. Staff believes the approval of the CUP will not be detrimental to persons or properties in the immediate vicinity nor to the City in general because of similar uses in the general vicinity.

The applicant, Mr. Hoang Tich Tong (“Applicant”), is proposing to construct six two-story apartment units at 3035 Adelia Avenue, South El Monte, California 91733 (“Property”). The proposed Project consists of six apartment units split between two buildings. Each unit will be two stories with an attached two-car garage and have 1,105 square feet of living area. Each unit will consist of a private backyard area with a trellised patio, kitchen, dining room, living room, three bedrooms, and two and one-half bathrooms. There will be a total of two guest parking spaces for the proposed Project.

Off-street parking spaces shall be provided on-site as required by SEMMC Chapter 17.60 (Off-Street Parking and Loading). All of the proposed parking complies with those requirements and must be maintained as such thereafter in a reasonable and acceptable manner or condition. The proposed Project will provide an attached two-car garage for each apartment unit, and two guest parking spaces have been provided.

The proposed site plan has been designed to provide interior circulation with a 25-foot clear-to-sky fire lane for emergency access as required by the Fire Department, thereby ensuring a smooth traffic flow on public streets reducing congestion and associated air quality impacts.

Due to the location of the Project, the elevations of the proposed apartment units are designed to complement and improve upon the surrounding neighborhood by using architectural features that will enhance the façade of the houses. The Applicant is proposing to incorporate different features from the vernacular mission style of architecture that will provide a visual attraction consistent with the goals and objectives of the City.

Under the zoning ordinance, 140 square feet of common or private open space is required per unit. A total of 1,230 square feet of common open space is being provided in the front of the Project to be utilized by the future tenants. Each apartment unit will also have a total of approximately 280 square feet of private open space located behind it. All of the common open space and setback areas will be landscaped with a combination of groundcover and trees.

A block column and wrought iron fence will be installed at the entrance to the Property along with a sliding wrought iron gate. A six-foot high block wall will be installed along the sides and rear property lines to provide for privacy from the neighboring commercial and residential properties.

This proposed Project to construct six apartment units is categorically exempt from environmental review pursuant to Section 15332 Class 32 of the California Environmental Quality Act Guidelines.

Staff RECOMMENDS that the Planning Commission adopt Resolution No. 17-25, approving Conditional Use Permit (No. 17-20), as conditioned.

Commissioner Gaeta-Anguiano: Do we have to work with the City of El Monte for a project like this for what type of properties are allowed in that area?

Assistant City Planner: We have surveyed the area, and contacted them and the surrounding properties are residential, condos, most of it is apartments, everything fits within that land use.

Chairman Barrera: Was there any kind of traffic study conducted? Was there one required? Open area or closed/ gated property? Any of these affordable?

Assistant City Planner: No, the traffic engineer didn't require a traffic study. It is a gated community, with wrought iron fencing and 6 foot block walls. No affordable rental units to my knowledge.

Commissioner Landeros: For the commercial zoning that falls within our City limits, if this project does come into play, there would be no more room for commercial, is that correct?

Assistant City Planner: Correct. The way the applicant is proposing, they are taking full advantage as residential.

Commissioner Diaz: Do we know why these units are not affordable? So In CR – this wouldn't allow for Mixed-Use, right? Any discussion having that as mixed use? Why are they opting for a gated community?

Assistant City Planner: You'd have to speak to the applicant why the units are not affordable. The zoning in CR DOES allow for mixed use, but it can be developed fully commercial, fully residential or mixed use. The site is too small to go Mixed Use which is probably why they went residential. The applicant wanted privacy for its' tenants.

City Manager: The applicant is here in the audience. Maybe the applicant can elaborate more on the questions being asked by the commission.

Commissioner Gaeta-Anguiano: Before the applicant comes up to speak, the proposed parking states 2 visitor stalls for the 6 units, is that enough parking for the project?

Assistant City Planner: The parking consists with zoning code 17.60 requirements we require 1 space for every 4 units, they supplied 2 parking stalls for this project.

Commissioner Diaz: City Attorney, at this time if we had additional proposed conditions, could we include them here at this time?

City Attorney: I would wait until the applicant; the public were heard before you get to the deliberation portion.

Chairman Barrera: Please sign in for the record.

Architect: Hello my name is Hoi Luc and Mr. Hoang Tich Ton is the owner of the land and the applicant. The City staff is correct in regards to the Mixed Use of the land, the lot is too small for commercial. Also, the parking required 1.5 guest parking so we provided 2 stalls. We didn't want to go with a basement style parking, with traffic on Garvey.

Chairman Barrera: Are you using water tolerant landscape? Did you consider solar panels? Will you be sub-metering the water? Or Master meter?

Architect: Yes, mostly trees that require less water as they grow, but still allows for the seasonal changes. Half evergreen and half Insidious. For now, the solar panels will pay for the exterior lighting of the complex, so the tenants don't have to pay for that. As for

the water meters, I would like there to be individual meters at each unit, but that will be a requirement imposed by the utility company.

Commissioner Landeros: I curious to know why you chose to build apartments and that I understand those will not be affordable, is there a reason why? That is a big concern for our City as you know affordable housing crisis, so I was just curious as to why you chose to go that route?

Architect: The way that construction works is that normally if there is affordable housing, there is a trade off with the City for subsidies half paid by the City and half paid by the private sector, but in this case none was offered to us. We would love to have affordable housing, but the lot is small. If there were 20 units, then we could negotiate by making 6 affordable, but because the size of the lot, there's not much we can do.

Commissioner Diaz: With respect to the rent vs. own, why did you opt to rent instead of sell?

Owner/Mr. Hoang Tich Ton: The land is too small to sell the homes. The owners want a bigger home with land if they were to buy, and these units are too small.

Commissioner Diaz: Well they do have tiny homes, like in Reno Nevada where they sell the homes for \$250,000 -\$300,000. But the idea of having and buying a home still exists, even though it's a small 1100 sq ft home, but I guess I understand what you mean.

Architect: Normally in the CUP, the city could impose some conditions by allowing us to build and we could deviate from the zoning, but in this case, I have to develop the land as any residential commercial zone. If the land was already multi-family then I could have build the homes already and no need for the CUP, seems unfair to me, but if Mixed Use CUP has certain guidelines for the developer to follow. Then we can create a trade-off of some sort for bigger units.

Commissioner Diaz: I totally and completely understand, that we do need to update our General Plan. Some of these guidelines date back to 2000. And I completely agree and understand where you are coming from. But I think if the commission and yourself along with the City Manager are willing to work something out to make those units affordable housing, to allow the people to purchase a home or maybe add more homes to the project. I know these opportunities don't come very often, but I would like to thank you for investing in South El Monte, we need more housing in South El Monte. I think if you were available to talk and negotiate that would be ideal for our situation.

Architect: We looked into the surrounding areas and the idea of making Condos, but the property north are apartments, and to have people buy the condos and turn around and rent them out, doesn't make financial sense to us. We'd rather capture the opportunity ourselves. My client can have control of the units, make some money and maintain this property. I may be wrong, but that is my recommendation to my client.

Commissioner Diaz: We can limit some of that exposure right, if you want to split a parcel, like maybe you could live in one and rent the others – because I believe there's a

restriction to that effect. What I'm saying is if there is the opportunity to discuss other options or maybe impose a restriction to what or how you can use those units.

City Attorney: I'm going to point something out quickly, unless Ian can point us to a specific code that addresses or is required for owning versus renting would caution the Commission to impose such a condition, if the zoning, or City code if it is not reasonably related to the impact this development will cause.

Assistant City Planner: There is currently no condition, like that. I think you mean when there are 2 single family homes on a lot, you cannot sell one off, you must live in one and you can rent the other. That is only for 2 two family single homes.

Commissioner Diaz: You can limit within governmental guidance to let's say 10% of this type of property can be used for x, y and z. Like for restricting the percentage of investor-owned property that we can negotiate with the developer and owner here, we can avoid someone trying to make a quick buck on your investment.

Commissioner Landeros: Do you have an average of what the rent is in the City?

Chairman Barrera: I understand the City of South El Monte does not have rent control in our area. But to bring up the point Commissioner Diaz made, this is something we would need to discuss with the City Attorney, City staff and hammer all these questions before the applicant comes up to address the Commission.

Commissioner Diaz: I get that, I understand where he's coming from. He is just following the guidelines we have in place, which we said date back to 2000. And we are facing different issues today than we were in 2000. So it makes it very difficult on both sides.

Commissioner Landeros: Is that a valid question to ask, How much rent is in the area?

Commissioner Diaz: Well the average rent for a 2 bedroom is 1800-2000?

Architect: Right now, we have to raise some money to build the homes. The banks don't lend on construction loan easily. So right now we have to get a private investor to help build the homes and then we can get a loan through the bank. So right now I priority is get financing, and the eventually the realtor can tell us how much the rent is in the area depending on the market

Chairman Barrera: I'm going to remind you all that we are here to either approve or deny the CUP application for the 6 apartments being built.

Motion made by Commissioner Gaeta-Anguiano and seconded by Chairman Barrera to Adoption of Resolution No. 17-25 approving a Conditional Use Permit (No. 17-20), which would allow for the development of six two-story apartment units with attached garages at 3035 Adelia Avenue.

Vote: Res. No 17-25 / VOTE: 4-0

Ayes: Barrera, Landeros, Diaz

Noes: None

Absent: Lauria and Gaeta-Anguiano

Abstain: None

Action: Approved

H. PLANNING COMMISSION ITEMS:

Commissioner Diaz commented if the owners of Dunkin Donuts/Baskin Robbins can put in a bike rack? He also commented on the status of the report for Planning

Commissioners 2year project update this administration has approved and made a comment regarding Storm water run-off requirements for Foster Farms as well as made an invitation to the Merced Street Project Workshop on 10/13/18 11a-2p.

Commissioners Landeros commented that it would be ideal if staff work on general plan update.

Commissioner Gaeta-Anguiano wanted an update on the Rosemead overlay. Staff responded City Council to decide after Sept. 25, 2018.

Commissioner Barrera commented if the City Attorney could please explain revocation process? City attorney responded with, they have 10 days to appeal, but City Council will have to revoke as well.

I. STAFF ITEMS: Commissioner Barrera asked if there were any staff items. None were addressed.

J. ADJOURNMENT: Motion made by Commissioner Diaz and seconded by Chairman Barrera to adjourn meeting at 7:47 p.m. until next Planning Commission Meeting set for September 18, 2018 at 6:00pm.