

**CITY OF MADERA PLANNING COMMISSION  
SPECIAL MEETING  
May 24, 2021**

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

**ROLL CALL**

**PRESENT:** Commissioner Robert Gran Jr. (Chairperson)  
Commissioner Alex Salazar (Vice Chairperson)  
Commissioner Rohi Zacharia  
Commissioner Bobby Sheikh  
Commissioner Ryan Cerioni  
Commissioner Richard Broadhead

**ABSENT:** Commissioner Ramon Lopez

**STAFF:** Gary Conte, Planning Manager  
Hilda Montoy, City Attorney  
David McPherson, HDL Consultant  
Brandi Garcia, Recording Secretary  
John Thomason, Senior Planner  
Derek Sylvester, Associate Planner  
Adam Klier, Assistant Planner

**PLEDGE:** None

**PUBLIC COMMENT:** None

**MINUTES:** None

**CONSENT ITEMS:** None

**PUBLIC HEARING ITEMS:**

**1. Municipal Code Text Amendment**

A noticed public hearing to consider amendments to Title X: Planning and Zoning of the City of Madera Municipal Code of Ordinance as it relates to the siting of the cultivation, processing, manufacturing, testing, sale and distribution of cannabis and cannabis products in the City. Staff proposes amendments to the following sections of the Planning and Zoning Codes: § 10-3.802 (C-1, Light Commercial zone), § 10-3.902 (C-2, Heavy Commercial zone), § 10-3.1002 (I, Industrial zone), and § 10-3.11.-503 (IP, Industrial Park zone).

The project is exempt from the California Environmental Quality Act (CEQA) because Proposition 64 and California Senate Bill 94 (SB 94) exempt the creation of ordinances and regulations for cannabis activities under California Business and Professions Code (BPC) Section 26055(h).

The item was presented by Senior Planner, John Thomason.

Commissioner Gran asked if C2 would be allowed for sales and production?

Mr. Thomason said yes, that is his understanding.

Mrs. Montoya wanted to clarify that we keep talking about 'by right' which is correct under the zoning laws. However, the regulatory ordinance that was referenced, which the City is working on, contains comprehensive rules and regulations that don't happen for other businesses such as background checks, etc. There are very specific requirements such as location, etc. When you get to the uses of cultivation, distribution and manufacturing there are very extensive requirements in the regulatory ordinance. The Council made an early decision to have regulatory requirements as opposed to a conditional use permit. However, many of the requirements that would be required in a use permit are integrated into the regulatory ordinance. She wanted everyone to understand it's more than a by right for these businesses. The other thing is the C1 and C2, both authorize retail sales, the cultivation, distribution, manufacturing and testing labs are authorized in the Industrial and Industrial Park Zones.

Commissioner Gran confirmed that C2 would not allow manufacturing.

Mrs. Montoya confirmed, yes.

Commissioner Gran asked what the reasoning behind that is. There's a lot of properties along 99 that would be ideal.

Mrs. Montoya said she will defer to the Planners or Mr. McPherson.

Commissioner Gran said he brings it up because there's a lot of properties along Highway 99. He also thinks that every one of these should be a CUP. Then each business has it's personal CUP and the guy selling knows they cannot just start manufacturing in the back or try to grow into something else.

Mr. Conte asked if John could be allowed to finish his staff report and then questions can be asked.

Mr. Thomason continued with the staff report.

Commissioner Lopez said he realizes they are changing the zoning. There are four zones, he didn't see any zoning anywhere. How does the public know what's being changed? Is there a map and was the public allowed to see it?

Commissioner Cerioni said the City's zoning map is available online and the public can view it.

Commissioner Lopez said his question was for staff.

Mr. Thomason said he would say the same thing, it's available on the City's website.

Commissioner Lopez asked Mr. Thomason to pull it up.

Mr. Thomason showed the map on his screen.

Commissioner Lopez asked Mr. Thomason to show the areas on the map. It's hard to see.

Mr. Thomason explained the zone colors on the map.

Commissioner Lopez asked where tobacco is allowed, and if it was a specific zone.

Commissioner Gran said no and that they have other requirements such as distance from schools, churches, etc. There are specific requirements. He was advocating a CUP for each to make sure the requirements are tailored for that specific business at that location and not get themselves in a situation to open them up to liability.

Commissioner Lopez said the CUP cannot be applied to the zoning though.

Commissioner Gran said no, as an example his movie theatre can operate in a C1 zone, but he has to have a CUP and that's so that a normal movie theatre doesn't become a porn house overnight. That's how they regulate it.

Commissioner Lopez said he understood that but that and asked for clarification from Mr. Conte.

Mr. Conte said he would go over some of the land use. John showed where some of the zone districts and you see a lot of C1 and C2 at the interchanges, you can't see some of the C1 and C2's that are along the 145 corridor and East Yosemite Ave. on that map. Also, along the area that straddles the railroad. As to why we don't include production in the C2 is because the growing of marijuana does produce an odor. There are residences and there would need to be certain setbacks that could not be achieved in the C1 and C2 areas. This use is suggested to be better in the I or IP areas, so it doesn't affect the neighbors with the operations. The other question was why not a CUP. The business ordinance as Hilda Montoy had outlined, is very detailed as far as what one needs to do to obtain a license for one of the processes and it is even more strict and rigorous than you would have with a CUP. These individuals who wish to operate a retail center, grow cannabis, etc. are going to be put through very rigorous process and then themselves, as operators to see if they are qualified enough to be owning and operating or producing. Doing both would be repetitive and to avoid any confusion they chose the by right process.

Commissioner Lopez said he noticed that the number of shops will be at the discretion of City Council and the Commission doesn't have that much control over it. Eventually the City Council will change. He thinks it should be a little more predictable. He also asked about a shop being allowed within 600 feet from a school.

Mr. Conte said that is correct, within 600 feet of a school, churches, daycare facilities and the like.

Commissioner Gran said a regular tobacco shop needs to be 1000 feet from a school etc. and now we are going to allow cannabis within 600 feet. He asked where the consistency was.

Commissioner Salazar said he would like to see some consistency with the distance from schools, etc. as well.

Commissioner Gran said that's not what they are voting on tonight.

Commissioner Lopez said he would like to see Madera High in reference to the nearest C1 and C2 zones.

Commissioner Gran asked which one.

Commissioner Lopez said just Madera High.

Commissioner Gran replied that you would need to see all three.

Commissioner Lopez said let's see all three.

Mr. Thomason pulled up the map and showed where the High Schools are located.

Commissioner Lopez confirmed that just across from Madera High on Olive is a C1.

Commissioner Gran noted that if they enacted the rules correctly it wouldn't be eligible.

Commissioner Cerioni said they denied a smoke shop in a C1 because of that.

Mr. Thomason then showed where Madera South High is located on the map.

Commissioner Gran said there is a lot more Industrial around that one. It's going to be covered by the rules and regulations they are going to fine tune. That's a reason he was suggesting a CUP for each one to make sure they got to make sure everything was correct.

Commissioner Lopez said he would also like to have a CUP for each one, but he just doesn't know if the Commission would have that authority.

Commissioner Gran said they do CUP's all the time. They basically give the City Council a clean package and they either vote to approve or deny.

Commissioner Lopez said he means to make the rule to have a CUP since currently there is not one.

Commissioner Gran said not yet because we haven't approved this yet.

Commissioner Salazar said they are voting to make that rule.

Commissioner Gran said he's not discounting Commissioner Lopez' concern with the schools but that's when they can come in and make sure the consistency is being followed like with the tobacco shops, etc. In turn, we also have to protect them once they are in a correct zone and not have a church opening up down the street. It goes both ways.

Mr. Conte said Madera South is located where you see U identified in the bright green. The surrounding areas are predominately Residential, no Commercial, there is Industrial. There will be a limitation as to where in the Industrial zoning district you can grow, manufacture and process marijuana products. There will again be the 600-foot separation from the school. If you go up to the north up Country Club, not yet in the City of Madera, is the other High School. It's currently in the County and there's predominately Residential, Rural Residential and some Commercial along Country Club Dr.

Commissioner Gran asked if there were any other questions from staff.

Seeing none, the public hearing was opened.

Mrs. Montoy spoke said it's unfortunate they don't have the regulatory ordinance in front of them. It's not yet in the form to be distributed. The Commissioner's will receive a copy when it goes to the Council at a Public Hearing. In relation to the proximity to sensitive locations, the numbers that have been expressed are the minimum requirements under to State law. The determination has not been made as to whether those numbers will be increased for Madera. She also wanted to point out the comments for a CUP. Mr. Conte referenced the rigorous items those individuals would have to go through and the Draft Regulatory Ordinance including Criminal Background checks and annual requests for renewal. She other items that would be required as well as noting a process for revocation. She noted again that the Commission would receive a copy of the Regulatory Ordinance which contains extensive regulations in case they wanted to make public comment on it when it goes to Council.

Commissioner Gran asked if that meant that any Cannabis business would be coming before the Planning Commission.

Mrs. Montoy said not at this time. It's not envisioned those businesses would go before the Planning Commission.

Commissioner Gran said it doesn't make much sense that tobacco businesses do but Cannabis businesses don't. He would like to emphasize the consistency factor. He doesn't think it makes much sense.

Mrs. Montoy said it was a policy determination that has been made. From a legal standpoint it is legally permissible to pursue it in that way. However, she said she understands his dissatisfaction with that approach.

Commissioner Gran replied, so were going to penalize a smoke shop more than were going to penalize a Cannabis shop the way the policy is written.

Mrs. Montoy said no because a tobacco shop doesn't have to withstand with extensive State Law requirements, nor do they have to do a Criminal Background check, etc.

Commissioner Gran said yes and no. If they want to sell beer at their smoke shop a Criminal Background check will come into play.

Mrs. Montoy said there will not be beer at these locations.

Commissioner Gran said no but the local convenience store guy needs a background check if he's selling beer. If he's selling Marlboro's, he has to be over 1,000 feet from a school or church, but the Cannabis guy doesn't.

Mr. Conte spoke and said he would like to introduce David McPherson and perhaps he can give a broad picture as to what the Cannabis Business Regulatory Ordinance is all about and be able to answer the questions that have been asked and define any questions coming.

Commissioner Gran held off on opening the public hearing and asked Mr. McPherson to speak.

Mr. McPherson said for the concerns about having less restrictions on the Cannabis than tobacco is actually to the contrary. With this you can shut them down faster. We're not entitling the property owner but the business through a regulatory process. If there are challenges, they have less rights other than just cause. Should there be challenges it's only good for 12 months. As the City Attorney said, they have a higher scrutiny of security requirements. How they store products at night and how they ensure that youth don't get near these facilities. The City has already set a higher level of detail so anything they do can be addressed more easily so they don't have to go back to the Planning Commission. 50% of Cities have gone this way and others have stuck with the CUP. If you have a business that's not appropriate or specifically with a location with a bad actor, you can get rid of the person but then with a CUP the property owner still has that entitlement and can bring another operator in. With this process, that cannot happen. The Council can take action to insure it does not occur.

Commissioner Gran asked if he was helping with this.

Mr. McPherson said he is working with staff.

Commissioner Gran said he cannot be happy with the inconsistencies.

Mr. McPherson said he said he understands the CUP is the traditional way. However, this is a policy decision where they were provided different scenarios provided to the Council and they made a determination to go this route.

Commissioner Gran said he gets that but one of the prime inconsistencies is between the regulations on the tobacco uses and this. It doesn't make a lot of sense.

Mr. McPherson said he will defer to staff.

Commissioner Lopez said we are nicer to the cannabis than to tobacco for the distances.

Commissioner Sheikh said it would have been nice if the Ordinance was brought forward with this.

Commissioner Gran said the push is to get it done now so it doesn't have to go through CEQA, but it would be nice if we did have the whole package.

Commissioner Sheikh said he does have a concern with not having to go through a CUP.

Mr. Conte, Planning Manager said each of the first statements under the zoning districts indicate the permitted uses by right and then to the use permits required. Those are the things that would change. It was made available in the staff report noting the uses by right.

With no further questions of staff, the public hearing was opened.

Mrs. Garcia asked for hands to be raised if anyone would like to speak on the item. No hands were raised.

With nobody to speak on the item, the public hearing was closed and returned to the Commission for further processing.

Commissioner Lopez said he would like to see the Ordinance before voting and he would like the public to see the map as well.

Commissioner Gran said the map isn't going to change any time soon. He was advocating for the CUP so they would have the opportunity to review them to make sure all the issues are correctly stated and are consistent. That was his big thing. He thinks all the C2 along the freeway could be used for cultivating and growing, etc. There's Industrial right next to it. As long as all the conditions are the same and they couldn't release the smell. Then the person that owns the C2 wouldn't have to do a zone change.

Commissioner Lopez asked if it could be amended to recommend a CUP.

Mrs. Montoy said staff is recommending approval of the Resolution before them. However, an alternative would be to adopt the Resolution and make some changes depending on the changes wanted. The Resolution would be the same until it gets to the recommendation section. It would say it is recommended that City Council to adopt a Resolution with the following modifications or changes.

Commissioner Gran asked Mrs. Montoy if she was advocating Motion 2 with the revised conditions that they are requesting.

Mrs. Montoy said she is recommending staff's recommendation to approve the Resolution as is but if the majority wishes not to go there it would be the recommendation with the revisions.

Commissioner Sheikh moved to approve Motion 2 with the CUP recommendation. Seconded by Commissioner Lopez, Commissioner Gran asked if there was any need for further discussion.

Commissioner Singh asked what the reason for going with a CUP was.

Commissioner Lopez said it gives them a little more authority to approve.

Commissioner Cerioni said, not necessarily.

Mrs. Montoy said it gives the Planning Commission authority, but the City would still retain the authority at a much greater power. The CUP runs with the land but a permit like the City is entertaining is unique to the particular owner and applicant that is applying. The City is promoting this process which takes the Planning Commission out of the process but in no way makes it easier for the applicant to get the permit or for operators to violate.

Commissioner Gran said he thinks there's issues because a smoke shop has to get a CUP.

Commissioner Cerioni said it's not like that in other cities. This is unique to the City of Madera.

Commissioner Gran said he knows that but right now it's inconsistent with what they're doing right now. The CUP also allows public input whereas here you don't have public input.

Mr. McPherson said as indicated in this process, in which the Commission has not seen, when they get through the second or third step prior to getting to Council they will go through a public meeting to insure there are no concerns from the community regarding the business and the operators to address items before Council makes the final decision.

Commissioner Cerioni thanked Mr. McPherson for his explanation and told the Commissioners this is an opportunity for the City to generate revenue and others are taking advantage and taking revenue from us and he doesn't like it. He's an advocate for Madera. We've waited long enough.

Commissioner Sheikh said he thinks there should be a CUP process, all the conditions Mr. McPherson mentioned can be included in the CUP process.

Mr. Conte said he didn't mean to interrupt but he wanted to explain the difference between a by right use and one subject to a use permit. In the even that something goes south regardless of if it's a retail shop or a growing facility or manufacturer, there is a long-drawn-out process to revoke a use permit for someone that is not complying with the requirements of the Ordinance or zoning codes. With the Cannabis Business Ordinance, the business operation would be shut down immediately and action taken by Council. You don't have to go through the process of revoking the use permit which would run with the layoff the land not with the operator. In the even we recognize that site should not have happened we have the ability to revoke it.

Commissioner Gran said he understands that but why isn't it coming before the Planning Commission so they can make sure there is consistency. He gets the enforcement, and he agrees with the streamlined enforcement, but he doesn't understand the bypass of the Planning Commission. He wants to vote for it, and he thinks they can come to some sort of compromise to move forward. He agrees with Ryan that this is an important revenue source for this community. This can be a great asset.

Commissioner Cerioni said people are driving to Merced to spend their money and he wants the money spent in this community for the people that choose to patronize those businesses.



Mrs. Montoy asked if there was a motion and a second.

Commissioner Gran asked if there was any need for further discussion.

Commissioner Lopez said he thinks everyone wants the revenue, but he thinks that having another layer by having a CUP is the right way.

Commissioner Cerioni said he is against the CUP allowing the use at that site. He wanted to make a motion without the CUP, however there was already a motion.

Mrs. Montoy read the motion on the table to confirm that's what the Commission had said.

Mrs. Garcia polled the commissioners:

Commissioner Richard Broadhead – no  
Commissioner Ryan Cerioni – no  
Commissioner Ramon Lopez – yes  
Commissioner Rohi Zacharia – no  
Commissioner Bobby Sheikh – yes  
Vice Chairperson Alex Salazar – no  
Chairperson Robert Gran Jr. – no

Commissioner Gran asked Ryan if he would now like to entertain a motion.

Commissioner Cerioni moved to approve Motion 1. Seconded by Commissioner Broadhead.

Mrs. Garcia polled the Commissioners:

Commissioner Richard Broadhead - Yes  
Commissioner Ryan Cerioni - Yes  
Commissioner Ramon Lopez - No  
Commissioner Rohi Zacharia - Yes  
Commissioner Bobby Sheikh - No  
Vice Chairperson Alex Salazar - Yes  
Chairperson Robert Gran Jr. – Yes

The motion carried 5-2.

**NON-PUBLIC HEARING ITEMS:** None

**ADMINISTRATIVE REPORTS:** None

**COMMISSIONER REPORTS:** None

**ADJOURNMENT:** 7:08 pm

A handwritten signature in blue ink, appearing to read "Robert W. Gump", written over a horizontal line.

Planning Commission Chairperson

A handwritten signature in purple ink, appearing to read "Brandi Garcia", written over a horizontal line.

Brandi Garcia, Recording Secretary