

**CITY OF EL MIRAGE  
PLANNING AND ZONING COMMISSION  
REGULAR MEETING MINUTES  
DECEMBER 11, 2012**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Vice Chair Forrey called the meeting to order at 6:00 p.m. & led the Pledge.

**II. ROLL CALL**

Members present were Brandon Forrey, Frank Carnal, Robert Jones, and Justin McCarty. Doug Doede was excused. Staff members present were Senior Planner Mark Smith, and GIS Technician Jose Macias.

**III. APPROVAL OF THE MINUTES OF OCTOBER 9, 2012**

Carnal made a motion to approve the minutes of October 9, 2012, seconded by McCarty, and the motion passed on a vote of 3 to 0 with Forrey abstaining.

**IV. PUBLIC HEARINGS**

**1. Amended Separations between Various Restricted Uses**

Smith noted the attorney's concerns about the large separations. Doug Doede said he was okay with them. Lesser setbacks might be appropriate in larger communities but larger separations would be better for El Mirage. Jones agreed. Smith went over the proposal from last month of 7,920 feet [1-1/2 mile] between similar uses and 1,320 feet [1/4 mile] to residential uses.

Forrey said the distance over one mile is tantamount to a ban. You typically have a school within a mile. Smith said the El Mirage has no schools or churches in the four square miles south of Peoria. Forrey said that would only allow one. If we legally have to provide the ability to have such businesses, it is a bit much.

Jones said he agreed with the 7,920 feet. There are some of these businesses already. He did not want to see them anywhere near schools or residences. Forrey asked whether they required a conditional use plus the separation. Smith verified that they require both. Jones recommended changing the 1,320 feet to a mile separation. Forrey asked what other cities require. Smith said the state law required some separations for sexually oriented businesses. He did not survey other cities. Staff could get more information if the Commission wants it.

Forrey said with the recent businesses that went through, that was the chance to stop it. He thought the mile or mile and a half seemed excessive and it would open the City up to litigation. Carnal said the City Attorney was okay with it. Smith said he was okay with the wording except that he cautioned them on the distance to make sure that is what they want. Jones said he was not sure that the acting chair knew where the mile and a half distance came from. Smith said the minutes were clear that the Mayor suggested it. Smith said if the intent was to have no more of them or fewer of them that is what it accomplishes. Legal

counsel said they may want to consider the consequences. It would restrict them quite a bit. Forrey asked if the attorney have any recommendation beyond that. Smith said he thought it was a lot. Forrey agreed. Smith reiterated that Doede said it was a long distance but thought it was appropriate for the City because of its size but might be appropriate to larger businesses. Forrey asked if the item was open for recommendation. Smith said it was advertised but no one was present to address them. The Commission could make a recommendation and change it but it went to Council for final action. Forrey asked for Commission comments. Carnal said he was willing to go with a mile. McCarty was concerned that the City could be sued and asked if it is not a 100 percent exclusion whether the City could still be sued. Smith said the issue was that sexually oriented business and tattoos are considered freedom of speech and should not be totally excluded. The City has a few of these uses already and they are precluding existing ones. The question is if there are any locations for them left in the City.

Jones said he thought the Commission should have Smith look at what other cities require. If they are much less the Commission would need to reconsider the mile and a half. He suggested tabling it until they had the information. Forrey agreed and asked that smaller communities be included. McCarty asked if they cut it in half and it is still not considered enough, he wondered how much to cut it down. Carnal said it depended on what would be considered reasonable and if the City Attorney thinks it is defensible. Forrey said without research they were just picking numbers out of the air. Smith asked if they wanted to continue the item or table it. Forrey leaned toward continuing it. Jones moved to continue the item until next month. Carnal seconded the motion, and it carried unanimously.

**V. DISCUSSION ITEMS [NONE]**

**VI. STAFF REPORT**

Smith informed the Commission that Council offset their meetings in January to the second and fourth Tuesday, so the Commission will need to meet on the third Tuesday instead of the second Tuesday. Members had no problem with that. There are no other items staff thinks will be ready to advertise for next month.

Jones asked about the Mercado. Smith said a couple martial arts groups and others asked about using it but staff had to tell them that it was not available yet. Staff was still working with the manager. One man said he wanted to buy it. The manager case has been delayed in court. Staff does not know how it will turn out.

**VII. COMMISSIONER COMMENTS [NONE]**

**XIII. ADJOURNMENT**

The Chair adjourned the Commission meeting at 6:20 p.m.

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Mark L. Smith, Senior Planner

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Brandon Forrey, Vice Chairman