

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #16-07

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: April 6, 2016

PREPARED BY: Francisco Mendoza-Gonzalez,
Planner

SUBJECT: **Modification of Conditional Use Permit #1086**, initiated by Van Sinvongsa, applicant for Promenade Center, Limited Partnership, property owners. This application involves a request to modify an existing beer and wine ABC License to include the sale of liquor for Thai Cuisine II, located at 779 E. Yosemite Avenue, Suite G, within the Promenade Shopping Center in Planned Development (P-D) #48 with a Neighborhood Commercial (CN) designation. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #16-06 (Categorical Exemption)
- 2) Modification of Conditional Use Permit #1086

SUMMARY

Conditional Use Permit #1086 was originally approved by the Planning Commission in 2006 to allow a restaurant to sell beer and wine for on-site consumption at 779 E. Yosemite Avenue, Suite G (Attachments A and G). The subject site is located inside a tenant space of 2,165 square feet within the Promenade Shopping Center and has a zoning classification of Planned Development (P-D) #48 with a General Plan designation of Neighborhood Commercial (CN).

The applicant, Thai Cuisine II, is requesting approval to modify Conditional Use Permit #1086 to allow the sale of liquor (in addition to their current approval to sell beer and wine) for on-site consumption with meals. If granted approval, Thai Cuisine II would continue serving alcoholic beverages as an ancillary use to the existing restaurant. Approval of this Conditional Use Permit does not allow the applicant to convert their establishment into a bar, lounge, or night club, as those uses are not allowed within this zoning classification. Thai Cuisine II will continue operating as a restaurant and will maintain the same hours of operation (Monday through Sunday from 10:00 a.m. to 8:30 p.m.). The applicant has been selling beer and wine at this location since 2007. City staff, including the Police Department, have not received any complaints about this business regarding public drunkenness, lewd behavior, or criminal activities. Staff is recommending approval with conditions.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #16-06 (Categorical Exemption) and the modification of Conditional Use Permit #1086 (including the

adoption of the modified Resolution at Attachment H), subject to the following additional conditions:

- 10) Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.
- 11) In addition to beer and wine, the restaurant shall now be allowed to sell liquor if they meet all applicable Alcoholic Beverage Control (ABC) requirements.

(*). Denotes non-discretionary conditions.

PROJECT DESCRIPTION

Thai Cuisine II occupies approximately 2,165 square feet within the Promenade Shopping Center at Yosemite and Paulson Avenues (Attachment B). The restaurant is located within Building “E”, at the northern end of the building (Attachment C). Thai Cuisine II has been occupying this site since 2007. The restaurant consists of a dining area, a kitchen, two restrooms, a storage room, and an office. The applicant is not requesting to make any modifications to the interior or exterior of the building. The restaurant serves asian cuisine which is available for both dine-in and carry-out. The restaurant is open Monday through Sunday from 10:00 a.m. to 8:30 p.m.

The applicant is requesting approval to modify Conditional Use Permit #1086 to include the sale of liquor (in addition to their current approval to sell beer and wine) for on-site consumption with meals. Approval of this Conditional Use Permit does not allow the applicant to convert their establishment into a bar, lounge, or night club, as those uses are not allowed within this zoning classification. The applicant has been in contact with the Department of Alcoholic Beverage Control (ABC) and their ABC license to sell liquor is pending approval of this Conditional Use Permit. Because the applicant is requesting to sell alcohol with a full menu for on-site consumption, the project will not be reviewed for the overconcentration of alcohol sales within their Census Tract and will not require a Finding of Public Convenience or Necessity from City Council.

Surrounding Zones and Land Uses (Attachment A):

| Surrounding Land | Existing Use of Land | City Zoning Designation | City General Plan Land Use Designation |
|-------------------------|---|--------------------------------|---|
| North | Residential | R-1-6 | Low Density (LD) Residential |
| South | Residential/Commercial Office (across Yosemite Avenue) | R-2/PD #26 | Low-Medium Density (LMD)/Commercial Office |
| East | Vacant Lot/Residential (across Paulson Road) | R-1-6 | Low Density (LD) Residential |
| West | St. Patrick’s Church | R-1-6 | Low Density (LD) Residential |

BACKGROUND

The Planning Commission approved the Promenade Shopping Center in 2003. The subject site is located within Planned Development (P-D) #48 and has a General Plan designation of Neighborhood Commercial (CN). The shopping center was approved to have a mixture of uses including approximately 35,994 square feet of retail space, 24,015 square feet of office space, and 15,350 square feet of medical type uses. Restaurants serving alcoholic beverages within P-D #48 require Conditional Use Permit (CUP) approval.

Over the past decade, several restaurants within the Promenade Shopping Center have obtained CUP approval to sell alcohol for on-site consumption with meals. In 2005 and 2006, the Planning Commission approved alcohol sales for on-site consumption at the Strings Restaurant (located in Building D), Wingstop (located in Building E), and Asian Express (the subject site). The applicant is requesting approval to modify their existing alcohol licenses to include the sale of liquor as an ancillary use to the restaurant. The applicant has been selling beer and wine at this location since 2007. City staff, including the Police Department, have not received any complaints about this business regarding public drunkenness, lewd behavior, or criminal activities.

FINDINGS/CONSIDERATIONS:

General Plan/Zoning Compliance and Policies Related to This Application

- A) A restaurant with alcohol sales is allowed with Conditional Use Permit approval within the Neighborhood Commercial (CN) land use designation and the Planned Development (PD) #48 zoning district.

Merced Police Department

- B) During the year of 2015, the Merced Police Department recorded 171 incidents within a 900-foot radius of the shopping center. The table on the next page shows the number of incidents and the number of cases within that area involving DUI's, public intoxication, assaults, MMC violations, and narcotics violations (totaling 14 incidents for the year of 2015). As shown on the attached Incident Map (Attachment F), the majority of those incidents occurred away from the Promenade Shopping Center within the residential neighborhoods located north and south of the subject site. The number of incidents reported City-wide for the same time period was 63,024. Based on the total number of calls within the City, the 171 calls to this area equals 0.2% of the overall crime within the City. As shown on the attached Crime Hot Spot Map for City of Merced (Attachment D), crime rates in this area are considered low compared to the rest of the City and approval of this project should not overburden the Police Department with excessive calls related to alcohol.

Incidents and Cases Reported in 2015

| Incident/Case Type | Number of Incidents |
|---------------------------|----------------------------|
| DUI | 0 |
| Public Intoxication | 1 |
| Disturbance (assaults) | 2 |
| MMC* | 11 |
| Narcotics violations | 0 |

*Municipal Code Violations regarding open containers, drinking in public, etc.

Planning staff consulted with the Merced Police Department regarding the sale of liquor at this location. The Police Department did not have any concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for on-site consumption. Thai Cuisine II has been selling beer and wine at this location since 2007 and the Police Department has not had any particular issues with the restaurant or their management of alcohol sales. Based on the information provided by the Police Department and the fact that alcohol sales currently exist in the area (Strings and Wingstop), staff does not anticipate that the approval of liquor sales at this location would adversely affect the economic and public welfare of the surrounding area.

Parking

- C) Off-street parking was addressed with the approval of the shopping center. The approval of this Conditional Use Permit will not affect the parking.

Proximity to Residential Uses and Church

- D) The zoning ordinance does not establish a required distance for restaurants with alcohol sales from residential areas and churches. State law allows ABC to deny a license for projects located within 600 feet of schools, public playgrounds, and non-profit youth facilities. Generally, ABC will deny a license in the above situations when there is evidence that normal operation of the licensed premises will be contrary to public welfare and morals. Mere proximity by itself is not sufficient to deny a license. However, ABC will not license a new retail location within 100 feet of a residence unless the applicant can establish that the operation of the proposed premises will not interfere with the quiet enjoyment of the property by residents.

In this case, the residential uses across Yosemite and Paulson Avenues are approximately 200 to 300 feet away from the restaurant. The residential uses to the north are at least 400 feet away and the church is approximately 800 feet away from the restaurant. Since the sensitive uses are more than 100 feet away and due to the nature of the business, staff finds that there would be no significant impact to the area and the sale of liquor would not interfere with the quiet enjoyment of the surrounding residents. However, to make the project more compatible with the surrounding neighborhoods, a condition is being included to limit the hours of alcohol sales until 11:00 p.m., indifferent of the restaurant's hours of operation (Condition #10).

Environmental Clearance

- E) The Planning staff has conducted an environmental review (#16-06) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment G).

Attachments:

- A) Location Map
- B) Site Plan
- C) Floor Plan
- D) Crime Hot Spot Map for the Entire City During 2015
- E) Incident Map for the Entire City During 2015
- F) Incident Map Near Subject Site (900-foot Radius)
- G) Categorical Exemption
- H) Modified Planning Commission Resolution #2864 for CUP #1086

Low Density Residential

PAULSON

SPARROW

CARDINAL

Subject Site
(Thai Cuisine II)

St. Patrick's Church

Low Density Residential

Restaurants

Starbucks

ORIOLE

YOSEMITE

Commercial Offices

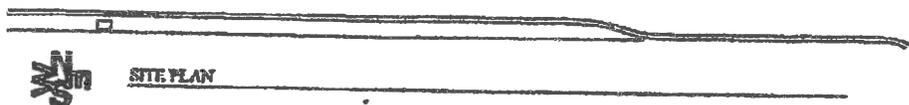
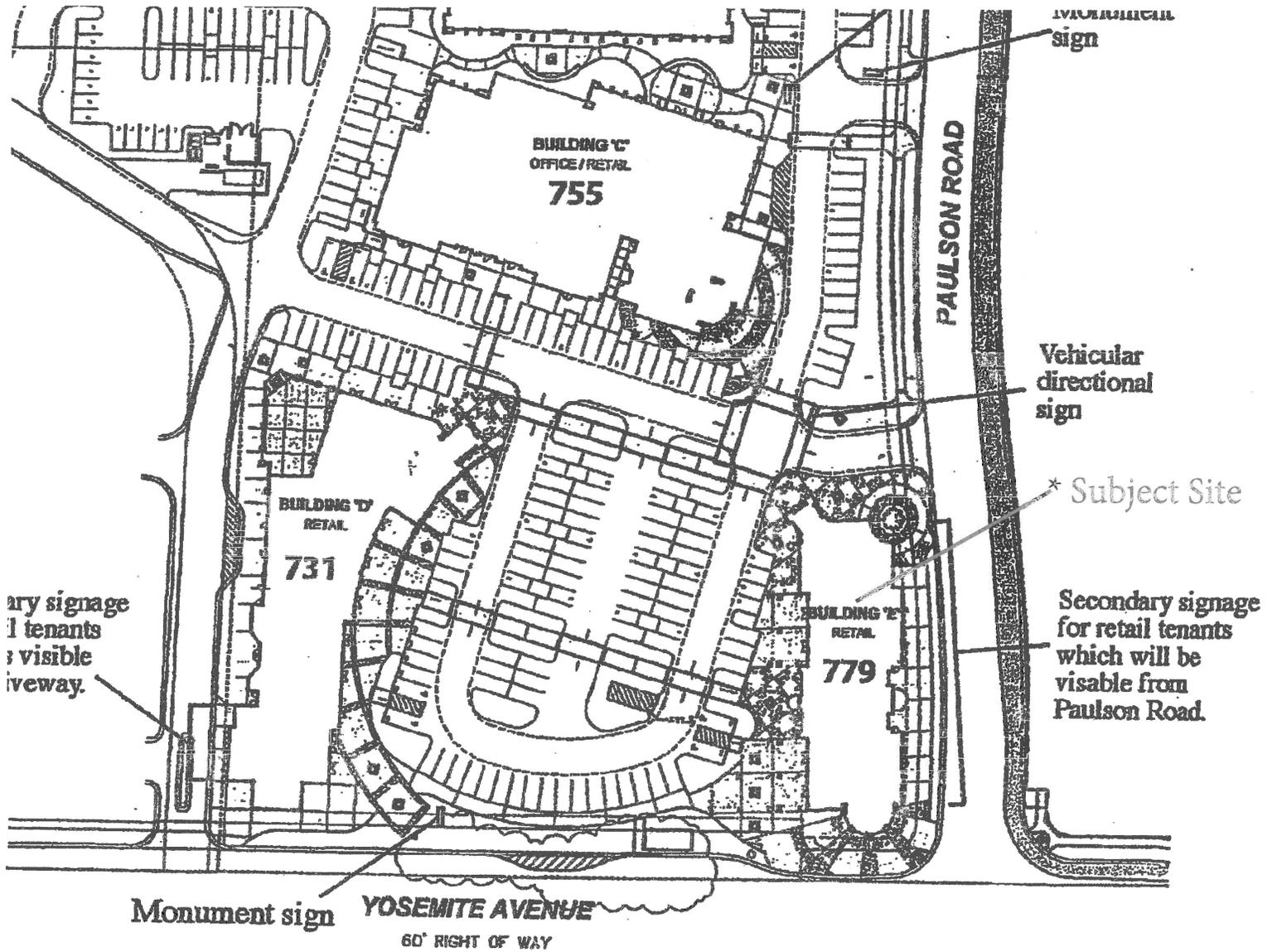
DOE

Low Density Residential

CENTURY

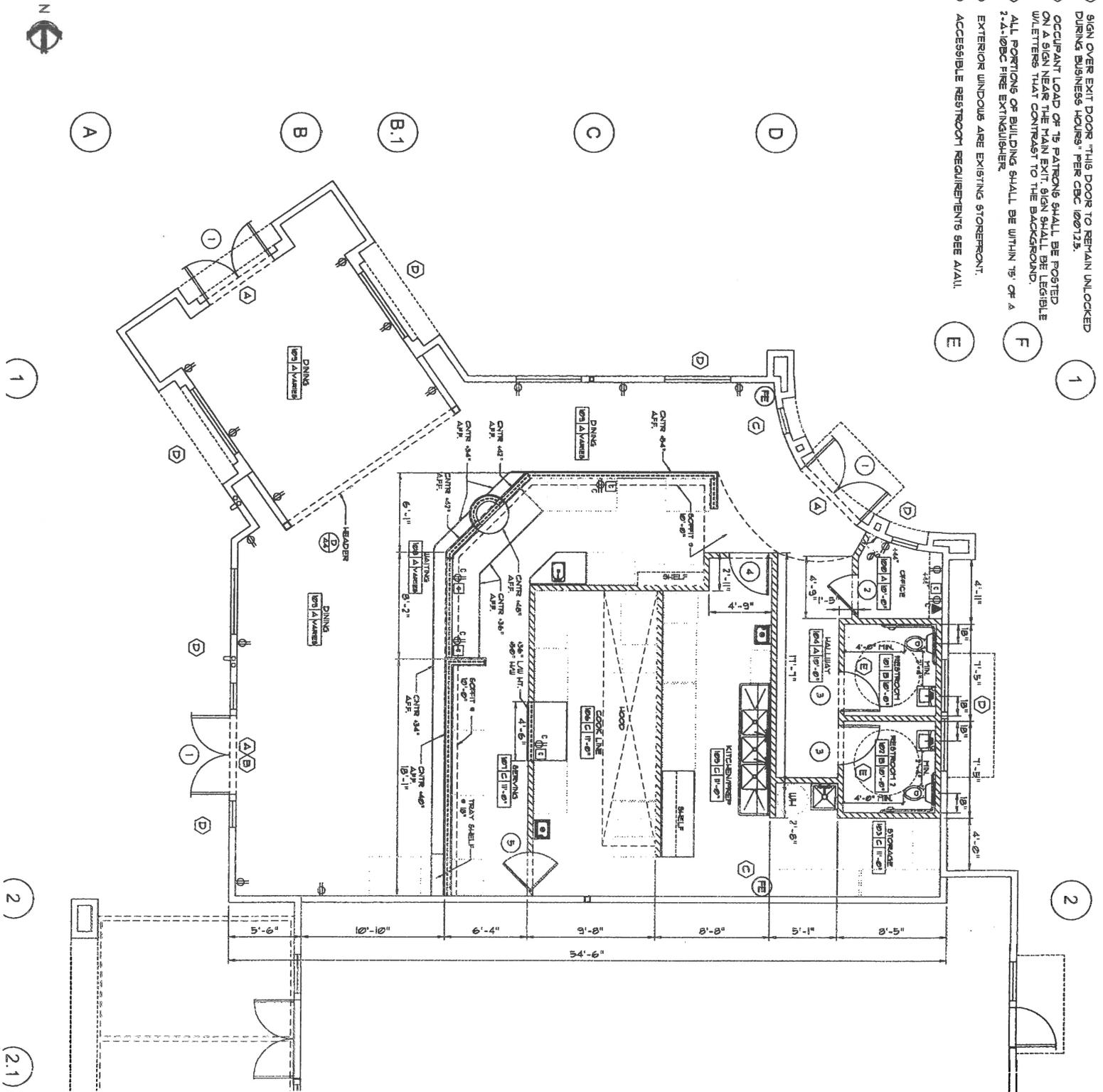
ATTACHMENT A

Site Plan



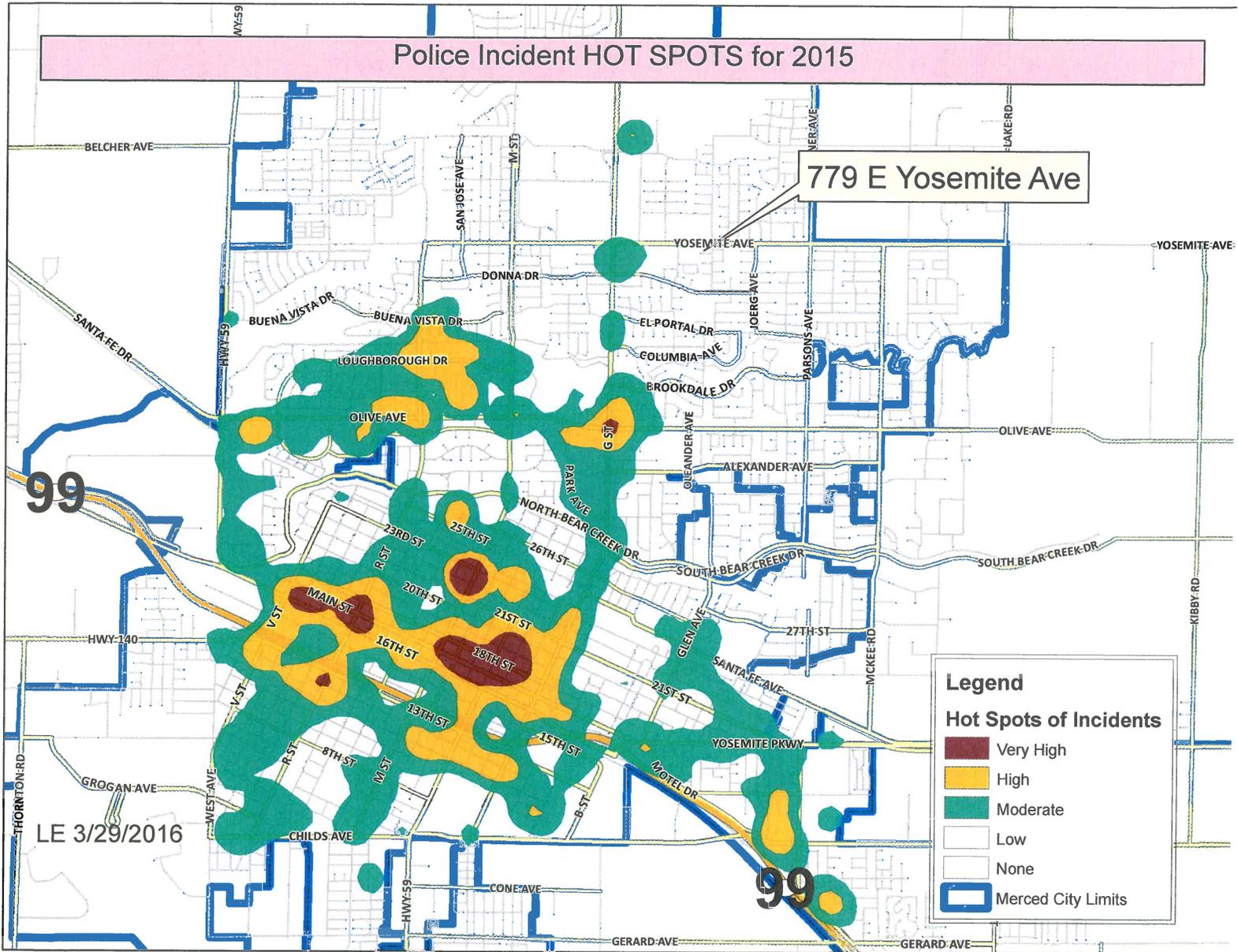
Floor Plan

- FLOOR PLAN NOTES:
- A) SIGN OVER EXIT DOOR "THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS" PER CBC 1007.15.
 - B) OCCUPANT LOAD OF 75 PATRONS SHALL BE POSTED ON A SIGN NEAR THE MAIN EXIT. SIGN SHALL BE LEGIBLE WITH LETTERS THAT CONTRAST TO THE BACKGROUND.
 - C) ALL PORTIONS OF BUILDING SHALL BE WITHIN 75' OF A 2-A-103C FIRE EXTINGUISHER.
 - D) EXTERIOR WINDOWS ARE EXISTING STOREFRONT.
 - E) ACCESSIBLE RESTROOM REQUIREMENTS SEE A111.

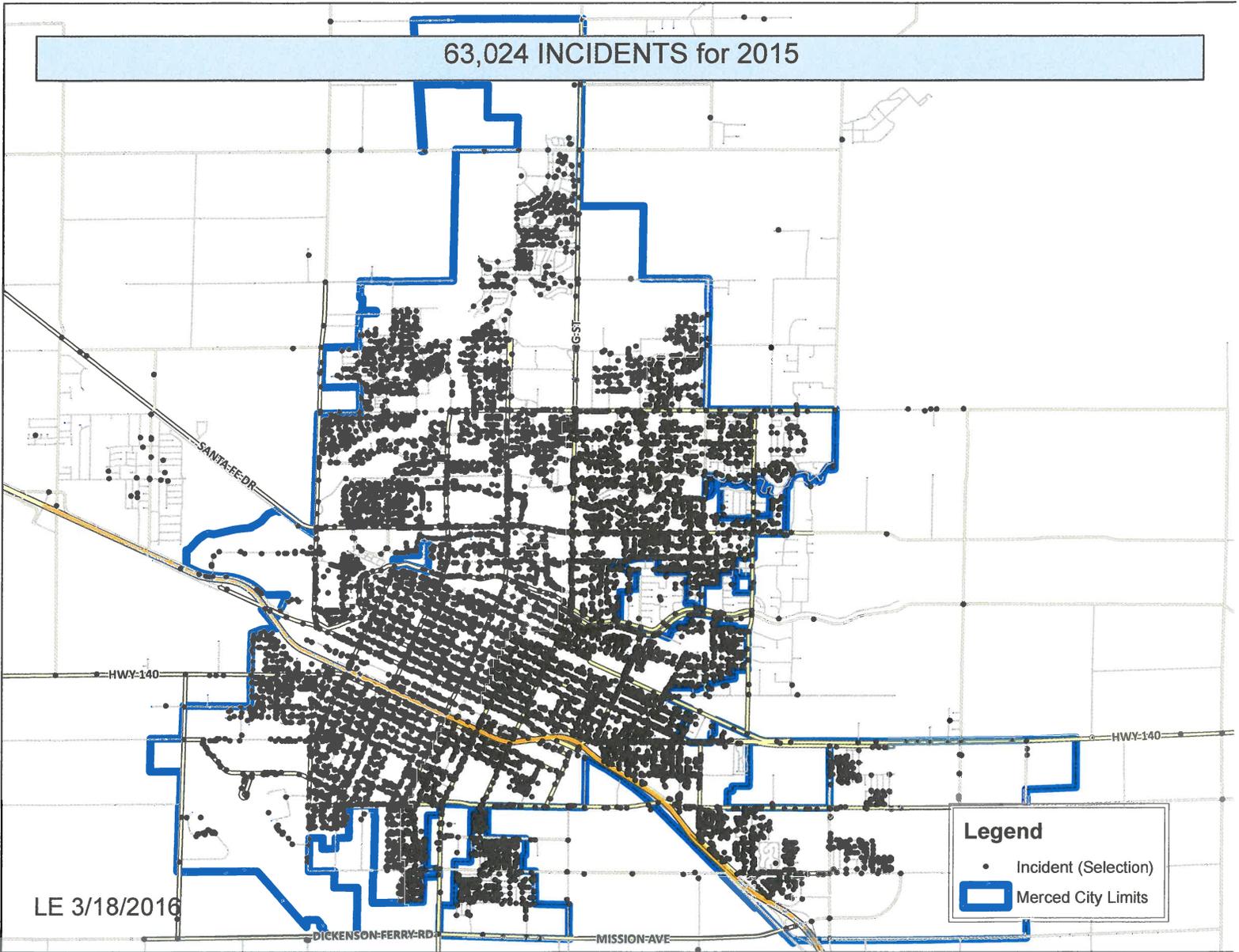


Police Incident HOT SPOTS for 2015

779 E Yosemite Ave

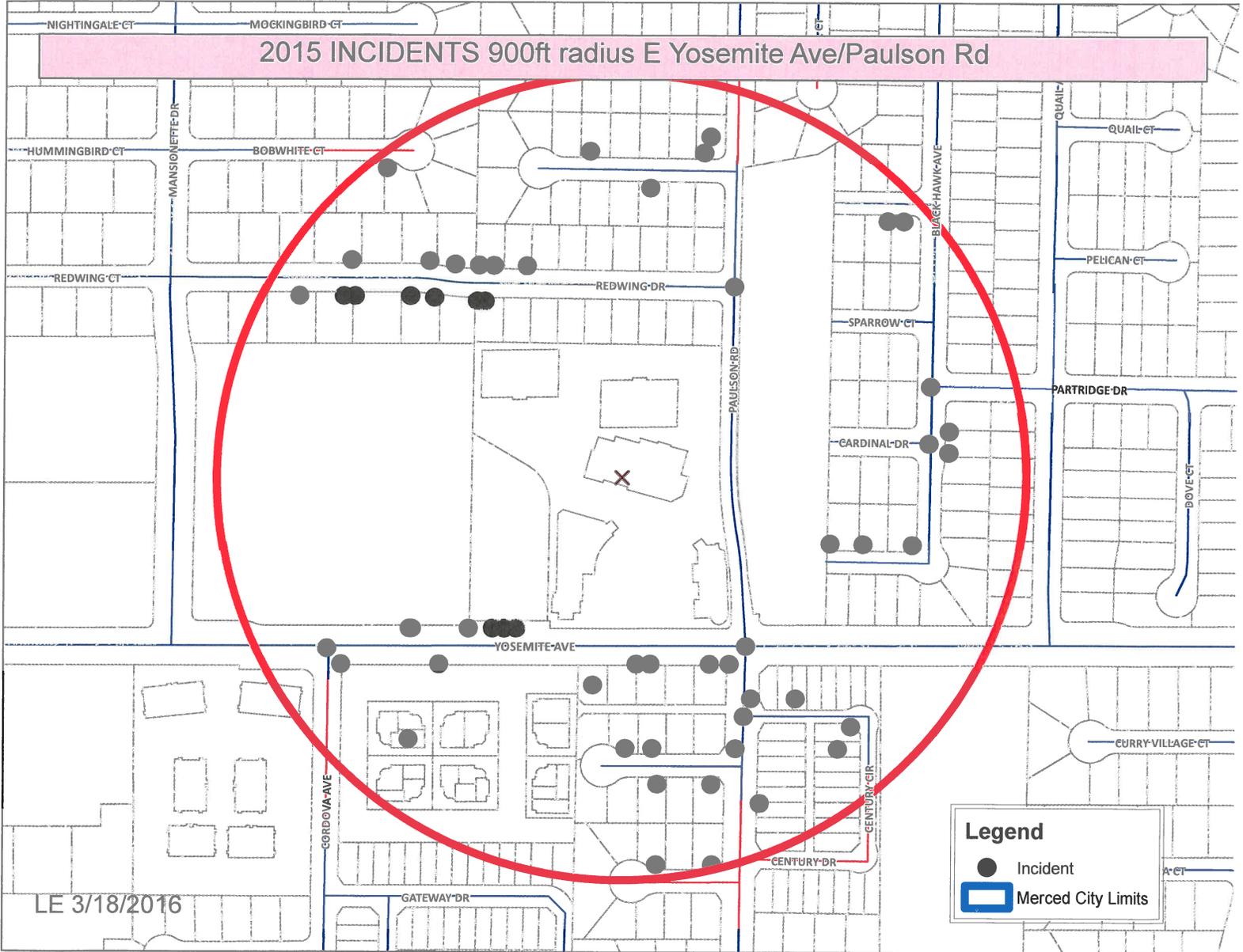


63,024 INCIDENTS for 2015



ATTACHMENT E

2015 INCIDENTS 900ft radius E Yosemite Ave/Paulson Rd



NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

X County Clerk
County of Merced
2222 M Street
Merced, CA 95340

Project Title: Modification to CUP #1086 (Environmental Review #16-06)

Project Applicant: Van Sinvongsa

Project Location (Specific): 779 E. Yosemite Ave., Ste. G APN: 231-180-005

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project:

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Van Sinvongsa

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: 15301 (a)
- Statutory Exemptions. State Code Number: _____.
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: As defined under the above referenced Section, the proposed project consists of minor interior and exterior alterations, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a).

Lead Agency: City of Merced

Contact Person: Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

Signature:  _____ **Date:** 3-8-2016 **Title:** Planner

X Signed by Lead Agency Date Received for Filing at OPR: _____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

**CITY OF MERCED
Planning Commission**

Amended by PC on
4/6/2016. See pg. 4.

Resolution #2864

WHEREAS, the Merced City Planning Commission at its regular meeting of March 8, 2006, held a public hearing and considered **Conditional Use Permit #1086**, initiated by Angela Peng, applicant for Promenade Center, Limited Partnership, property owners. This application involves a request to allow on-site sale of beer and wine within the Asian Express Restaurant, located at 779 E. Yosemite Avenue, Suite G, within the Promenade Shopping Center in Planned Development (P-D) #48 with a Neighborhood Commercial (C-N) designation; also known as Assessor's Parcel No. 231-040-009; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through D of Staff Report #06-22; and,

WHEREAS, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #06-10 and approve Conditional Use Permit #1086, subject to the following conditions:

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments C and D of Staff Report #06-22.
2. All conditions contained in Resolution #1249 ("Standard Conditional Use Permit Conditions") shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with the conditions set forth in Resolution #2685 for Conditional Use Permit #1033 previously approved for the *Promenade Shopping Center*.

ATTACHMENT H

PLANNING COMMISSION RESOLUTION #2864

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March 8, 2006/April 6, 2016

5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation

PLANNING COMMISSION RESOLUTION #2864

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of the Conditional Use Permit (CUP) after a public hearing and following the procedures spelled out in the Merced Municipal Code.

9. Separate sign permits are required and shall comply with the North Merced Sign Ordinance and the Master Sign Program for the Promenade Shopping Center.

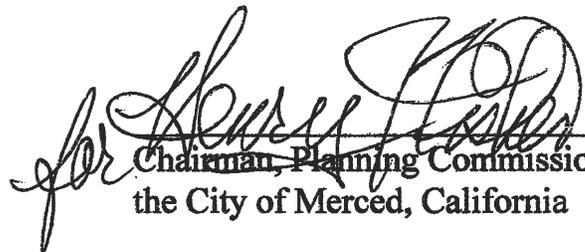
Upon motion by Commissioner Burr, seconded by Commissioner Ward, and carried by the following vote:

AYES: Commissioners Fisher, Acheson, Burr, Conte, Ward, and
Chairman Shankland

NOES: Commissioner Amey

ABSENT: None

Adopted this 8th day of March, 2006


Chairman, Planning Commission of
the City of Merced, California

ATTEST:


Secretary

PLANNING COMMISSION RESOLUTION #2864

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March 8, 2006/April 6, 2016

April 6, 2016: At their regularly scheduled meeting of April 6, 2016, the Merced City Planning Commission considered Modification to Conditional Use Permit#1086 and ERC#16-06.

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #16-07; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #16-06, and approve a Modification of Conditional Use Permit #1086 with the addition of Conditions #10 and #11 (Resolution #2864 for Conditional Use Permit #1086).

Upon motion by _____, seconded by _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

Conditions of Approval
Planning Commission Resolution #2864
Conditional Use Permit #1086

| |
|------------------------------|
| Amended by PC on 4/6/2016 |
|------------------------------|

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments C and D of Staff Report #06-22.
2. All conditions contained in Resolution #1249 (“Standard Conditional Use Permit Conditions”) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with the conditions set forth in Resolution #2685 for Conditional Use Permit #1033 previously approved for the *Promenade* Shopping Center.
5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation of the Conditional Use Permit (CUP) after a public hearing and following the procedures spelled out in the Merced Municipal Code.
9. Separate sign permits are required and shall comply with the North Merced Sign Ordinance and the Master Sign Program for the Promenade Shopping Center.
10. Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.
11. In addition to beer and wine, the restaurant shall now be allowed to sell liquor if they meet all applicable Alcoholic Beverage Control (ABC) requirements.

Conditions
10 & 11
added on
4/6/2016

n:shared:planning:PC Resolutions :Mod to CUP#1086 Exhibit A