

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #16-18

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Sept. 21, 2016

PREPARED BY: Francisco Mendoza-Gonzalez,
Planner

SUBJECT: **Conditional Use Permit #1214**, initiated by Ferass Abu Ghaban and Abdullah Taleb, applicants for Promenade Center, Limited Partnership, property owners. This application involves a request to allow the sale of beer and wine for on-site consumption at the Bobcat Diner, located at 755 E. Yosemite Avenue, Suite H, at the Promenade Shopping Center within Planned Development (P-D) #48 with a Neighborhood Commercial (CN) General Plan designation. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #16-26 (Categorical Exemption)
- 2) Conditional Use Permit #1214

SUMMARY

The Bobcat Diner is scheduled to open this fall within the Promenade Shopping Center at Yosemite Avenue and Paulson Road (Attachment A). The applicant is requesting Conditional Use Permit approval to serve beer and wine for on-site consumption, secondary to the primary restaurant. Restaurants are a permitted use within Planned Development (P-D) #48, but alcohol sales are a conditional use. The restaurant will occupy a 2,184-square-foot tenant space (Suite H) within Building "C," and will have approximately 45 seats (Attachment C). Approval of this Conditional Use Permit does not allow the applicant to convert their establishment into a bar, lounge, or night club. City staff, including the Police Department, have reviewed this request and are recommending approval with conditions.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #16-26 (Categorical Exemption) and Conditional Use Permit #1214 (including the adoption of Resolution at Attachment I), subject to the following additional conditions:

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments B and C.
- *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 applicable conditions set forth in Planning Commission 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 (with counsel selected by the City), 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 (with counsel selected by the City) 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) Alcoholic beverages shall not be allowed outside the building. A future outdoor seating area with alcohol service may be allowed with approval from both the Site Plan Review Committee and Alcoholic Beverage Control.
- *9) The restaurant shall meet all applicable Merced County Health Department requirements.
- *10) The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
- 11) This approval is for alcohol sales as an ancillary use to the primary restaurant only.
- 12) Request to operate as a nightclub, bar, or similar use shall require an additional review and approval from the Planning Commission (as required in the Zoning Ordinance).
- 13) 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.

- 14) Signs shall comply with the Master Sign Program for the Promenade Shopping Center.
- 15) Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.

(* Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The Bobcat Diner will occupy a 2,184-square foot tenant space (Suite H) within the Promenade Shopping Center near the northwest corner of Yosemite Avenue and Paulson Road (Attachment B). The restaurant is located within Building “C,” at the western end of the building (Attachment C). The proposed floor plan includes dining tables, dining booths, a dining counter, a kitchen, two restrooms, and an electrical room. The restaurant will serve a variety of food, with a focus on “camping meals” made from organic ingredients. The restaurant will operate Monday through Sunday from 7:00 a.m. to 10:00 p.m.

The applicant is requesting Conditional Use Permit approval to allow the sale of beer and wine for on-site consumption with meals. Approval of this Conditional Use Permit does not allow the applicant to convert their restaurant into a bar, lounge, or night club. The applicant has been in contact with the Department of Alcoholic Beverage Control (ABC) and their ABC license to sell beer and wine 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 (CO)
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 with 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 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 such as: Strings Restaurant (Building D), Wingstop (Building E), and Thai Cuisine II (Building E). City staff, including the Police Department, have not received any complaints about the above-mentioned businesses regarding public drunkenness, lewd behavior, or criminal activities.

FINDINGS/CONSIDERATIONS:

General Plan/Zoning Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Neighborhood Commercial (CN) and the zoning classification of Planned Development (P-D) #48 with approval of a Conditional Use Permit.

Merced Police Department

- B) Between 8/1/2015 and 7/31/2016, the Merced Police Department recorded 90 incidents within a 500-foot radius of the subject site. The table below 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 11 incidents for the time period studied). As shown on the attached Incident Map (Attachment E), 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 65,000 (approximately). Based on the total number of calls within the City, the 90 calls to this area equals 0.001% 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 between 8/1/2016-7/31/2016

Incident/Case Type	Number of Incidents
DUI	1
Public Intoxication	0
Disturbance (assaults)	6
MMC*	4
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 beer and wine 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. The Police Department has not had any particular issues with restaurants that provide alcohol service at Promenade Shopping Center. Based on the information provided by the Police Department and the fact that alcohol sales currently exist in the area (Strings, Thai Cuisine II, and Wingstop), staff does not anticipate that the

approval of alcohol service at this location would adversely affect the economic and public welfare of the surrounding area.

Parking

- C) Earlier this year, the Site Plan Review Committee reviewed and approved a parking lot expansion at the Promenade Shopping Center to accommodate the parking requirements for the Bobcat Diner (Attachment G). With the approved parking lot expansion, the Promenade Shopping Center has adequate parking to serve this business and other businesses within the shopping center.

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 location within 100 feet of a residence unless the applicant can ensure that their operation 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 300 feet away and the church is approximately 500 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 beer and wine 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 #15).

Environmental Clearance

- E) Planning staff has conducted an environmental review (#16-26) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment H).

Attachments:

- A) Location Map
- B) Site Plan
- C) Floor Plan
- D) Crime Hot Spot Map for the Entire City
- E) Incident Map for the Entire City
- F) Incident Map Near Subject Site (500-foot Radius)
- G) Site Plan for Promenade Parking Lot Expansion (Site Plan Review #397)
- H) Categorical Exemption
- I) Draft Planning Commission Resolution



Residential Properties

SPARROW

Subject Site

St. Patrick's Catholic Church

CARDINAL

Starbucks

ORIOLE

PAULSON

YOSEMITE

Offices & Clinics

Residential Properties

DOE

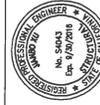
CENTURY

ANTLER

GATEWAY

ATTACHMENT A

755 E. YOSEMITE AVE., SUITE H
BOBCAT DINER
 A NEW RESTAURANT
 TENANT IMPROVEMENTS FOR



SHEET CONTAINS:
 Code-Keystone Floor Plan

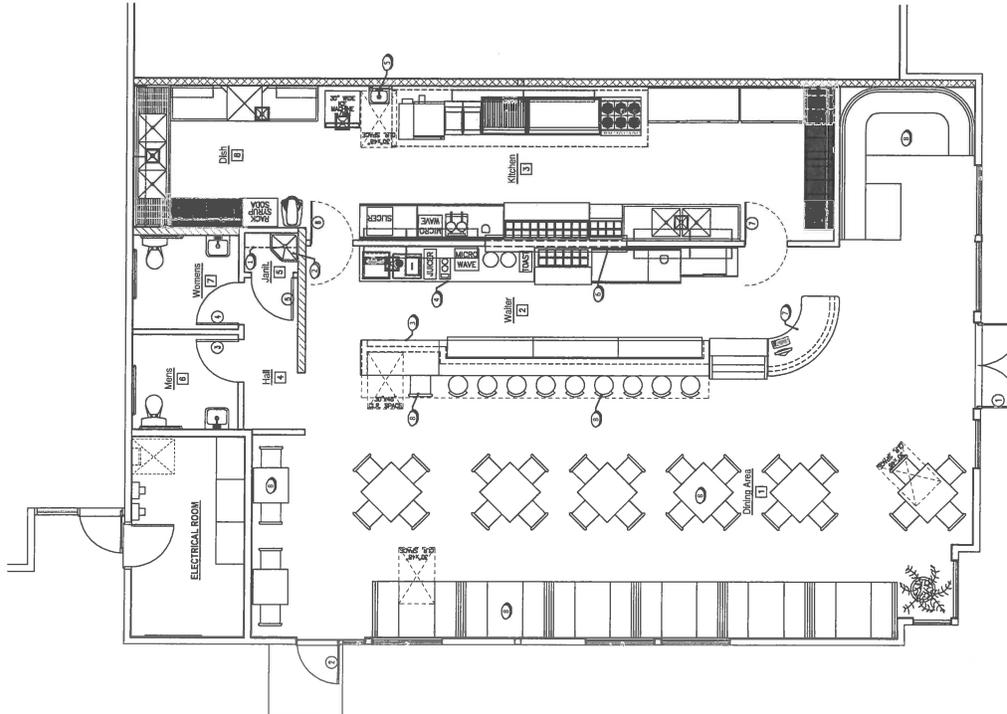
PREPARED FOR:
Rich Boys Toys, Inc.
 10000 N. 1st Street
 Oakland, Ca, 94605
 Ph: (925) 323-8515
 Fax: (925) 323-8515
 richboystoys@aol.com
 richboystoys@aol.com

PROJECT NO.:
 DATE: MAY 10, 2018
 DRAWN BY: AS SHOWN
 CHECKED BY: PHL
 JOB NO.: 18-070-00
 SHEET NUMBER:

A1.1

GOLDEN VALLEY
 CONSULTING & DESIGN
 405 West 17th Street
 Merced, CA 95341
 P.O. Box 548
 Merced, CA 95341
 Ph: (209) 733-3300
 Fax: (209) 733-3334

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____



CODE-KEYNOTE FLOOR PLAN
 SCALE: 1/4"=1'-0"

- KEY NOTES:**
- 1. 1/2" SCHED ALUMINUM BACK WALL OF JANITOR'S CLOSET @ 6' AS F.T.
 - 2. 1/2" SCHED ALUMINUM BACK WALL OF JANITOR'S CLOSET @ 6' AS F.T.
 - 3. 3/8" DIA. WOOD STUDS @ 16" O.C. WITH 1/2" TYPE 'X' GYP. BD. ON BOTH SIDES & R-13 INSULATION, THAT EXTEND TO THE UNDERSIDE OF THE ROOF SHEETING.
 - 4. 3/8" DIA. WOOD STUDS @ 16" O.C. WITH 1/2" TYPE 'X' GYP. BD. ON BOTH SIDES & R-13 INSULATION, THAT EXTEND TO THE UNDERSIDE OF THE ROOF SHEETING.
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LEGEND:

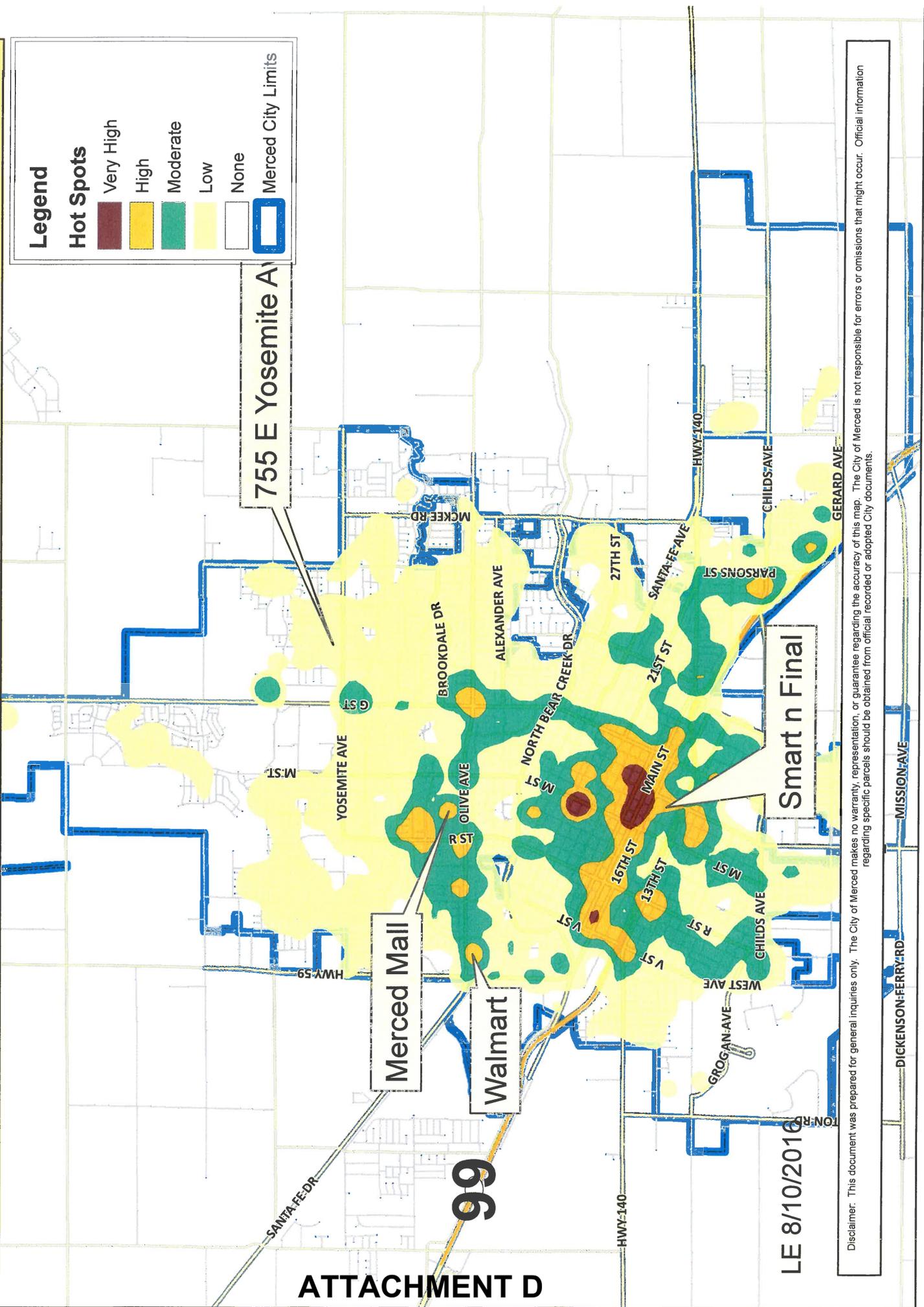
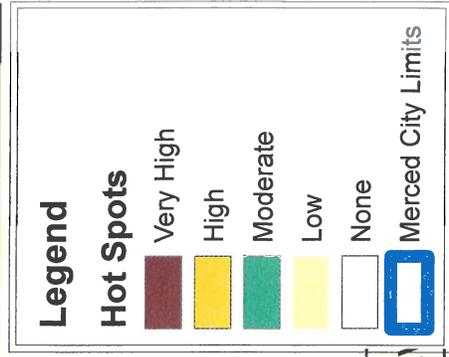
- EXISTING EXTERIOR TO REMAIN, REPAIR ANY DAMAGES TO MATCH EXISTING OR ADD FINISHES PER FINISH SCHEDULE.
- EXISTING EXTERIOR WALL - 1 HOUR RATED, 2x4 WOOD STUDS @ 16" O.C. WITH 1 LAYER OF 1/2" TYPE 'X' GYP. BD. ON BOTH SIDES & R-13 INSULATION, THAT EXTEND TO THE UNDERSIDE OF THE ROOF SHEETING.
- NEW INTERIOR WALL: 2x4 WOOD STUDS @ 16" O.C. WITH 1/2" TYPE 'X' GYP. BD. ON BOTH SIDES & R-13 INSULATION. SEE FRAMING PLAN ON SHEET SLD FOR WALL HEIGHTS.
- NEW FLOORING WALL: 2x4 WOOD STUDS @ 16" O.C. WITH 1/2" TYPE 'X' GYP. BD. ON BOTH SIDES & R-13 INSULATION. SEE FRAMING PLAN ON SHEET SLD FOR WALL HEIGHTS.
- NEW INTERIOR 1/2" WALL: 2x4 WOOD STUDS @ 16" O.C. WITH 1/2" TYPE 'X' GYP. BD. ON BOTH SIDES & R-13 INSULATION. W/COUNTER MOUNTED ABOVE PER PLAN.
- DOOR NUMBER (SEE SCHEDULE SHT. A10)
- ROOM NUMBER (SEE SCHEDULE SHT. A10)
- FIRE EXTINGUISHER (TYPE 2A-10BC), SEE SHEET A1.1 FOR LOCATIONS & NOTE #9 ON THIS SHEET A1.0

CODE ANALYSIS

ROOM NAME	SQ. FT.	LOAD FACTOR	OCC. LOAD
JANITOR'S CLOSET	618.4 S.F.	200	4.1
KITCHEN & SERVICE AREA	111.1 S.F.	300	.1
RESTROOM	184.3 S.F.	110	79.2
ENTRY HALL, REFS & WARE.	218.1 S.F.	110	85.1
TOTALS			

TYPE OF OCCUPANCY: A-2
 NUMBER OF STORIES PROVIDED: 2
 NUMBER OF STORIES REQUIRED: 2
 WIDTH OF STAIRS: 56.1 x 0.19 = 10.67' x 36" MIN.
 WIDTH OF STAIRS PROVIDED: 10.67' x 36"

Hot Spots of Police Incidents 8/1/15 - 7/31/16



755 E Yosemite Ave

Merced Mall

Walmart

Smart n Final

ATTACHMENT D

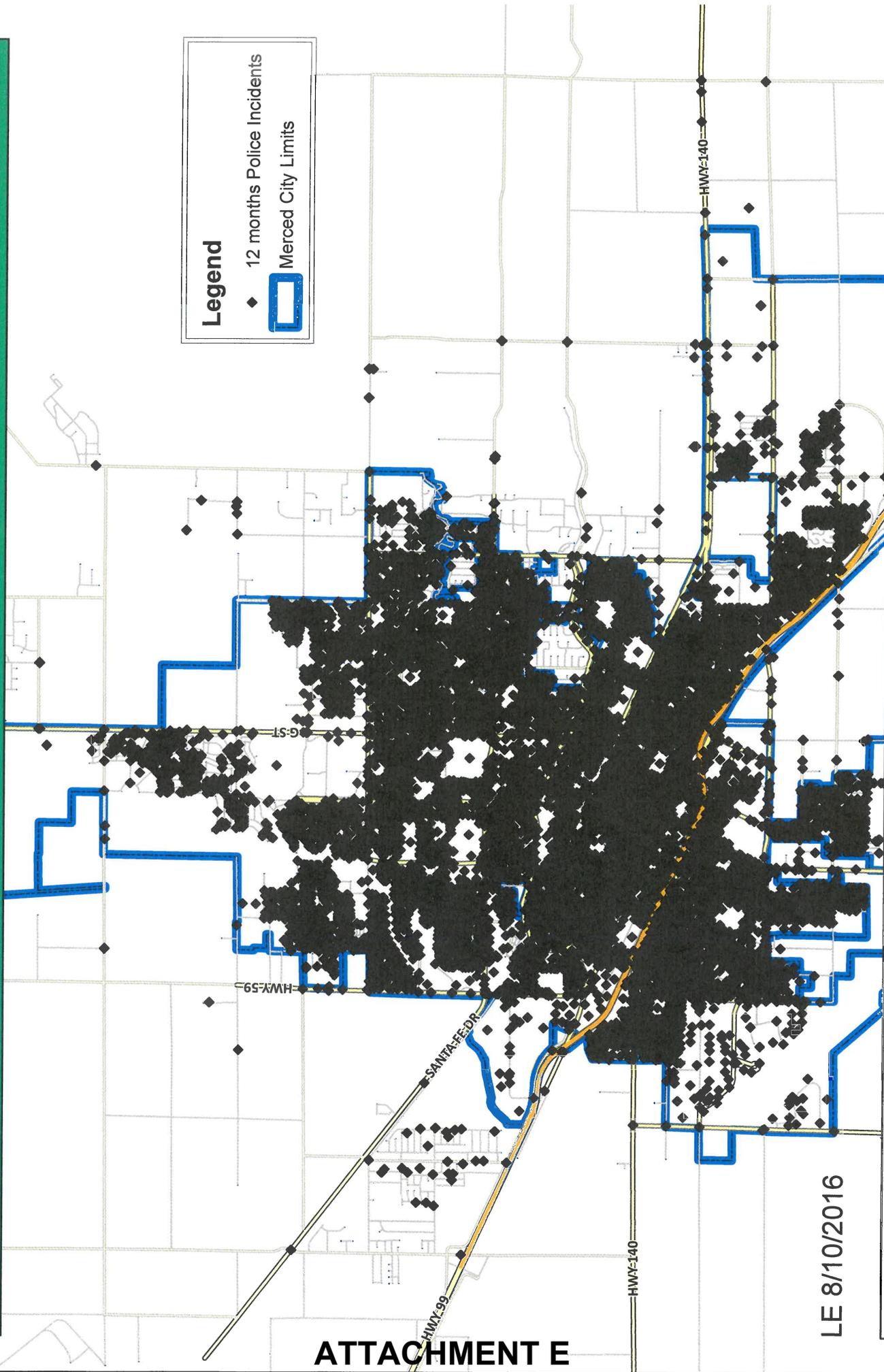
LE 8/10/2016

Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

Police Incidents Citywide 8/1/15 - 7/31/16

Legend

- ◆ 12 months Police Incidents
- ▭ Merced City Limits

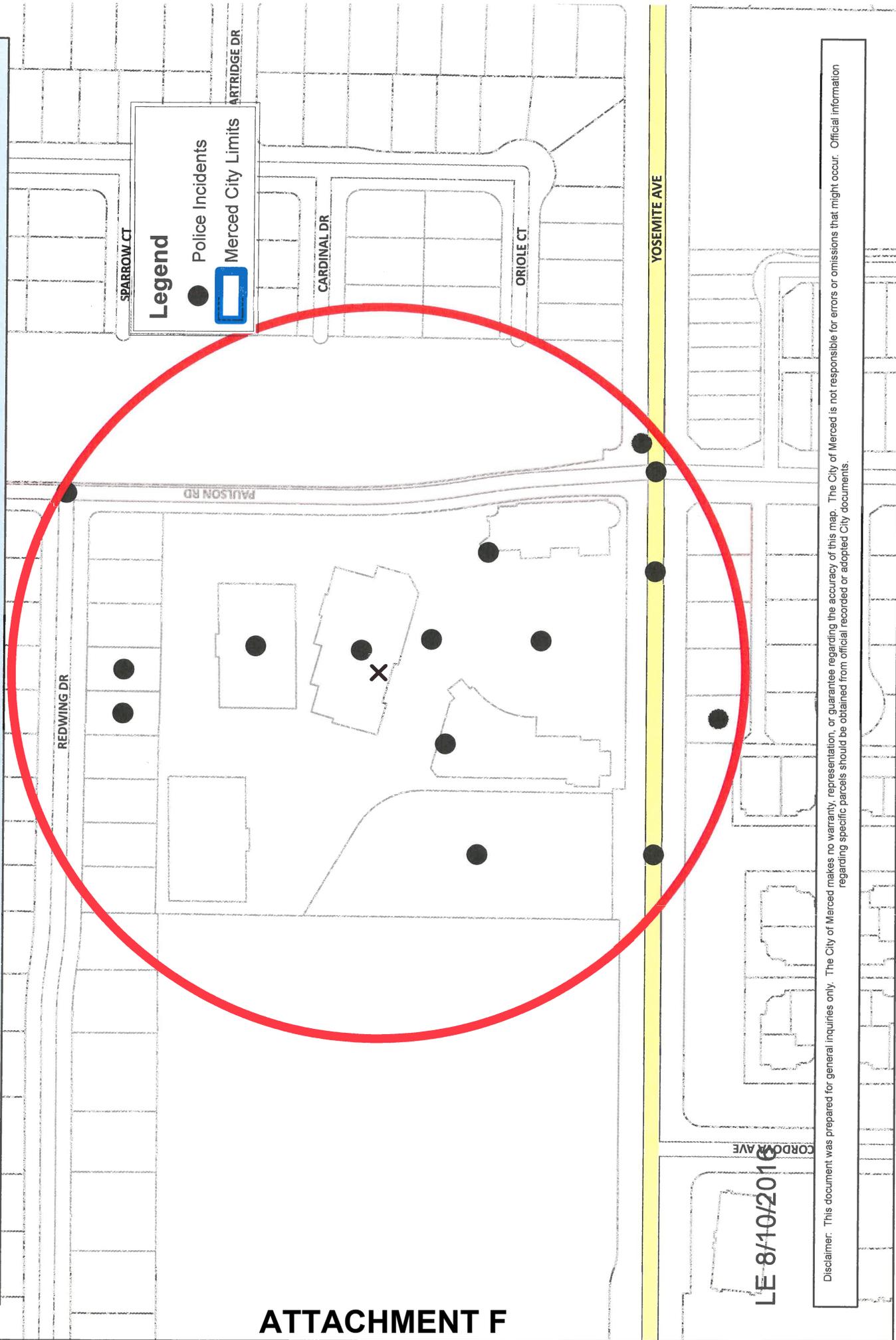


ATTACHMENT E

LE 8/10/2016

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Police Incidents within 500ft of 755 E Yosemite Ave 8/1/15 - 7/31/16



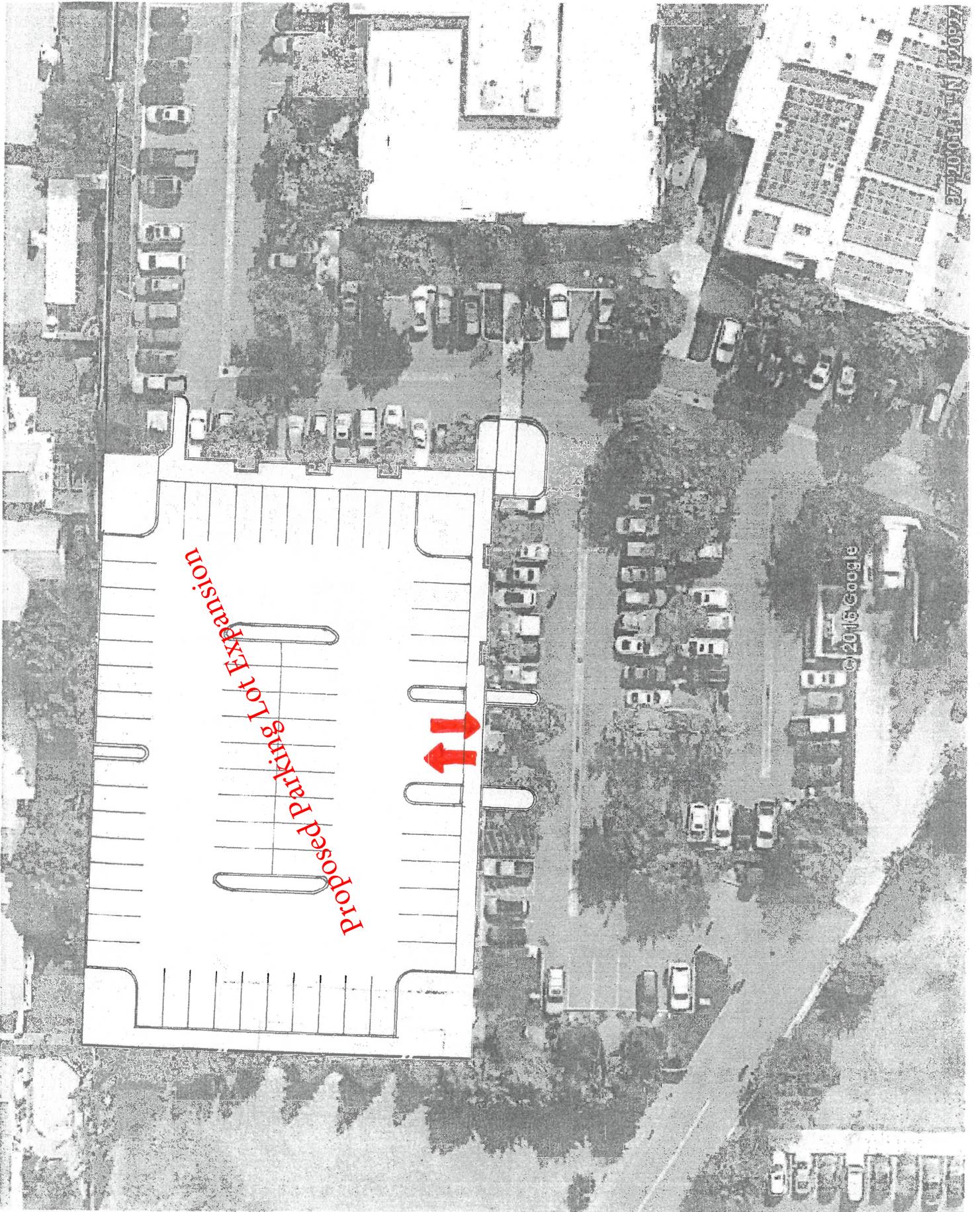
Legend

- Police Incidents
- ▭ Merced City Limits

ATTACHMENT F

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LE 8/10/2016



ATTACHMENT G

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: Conditional Use Permit #1214 (Environmental Review #16-26)

Project Applicant: Ferass Abu Ghaban/Abdullah Taleb

Project Location (Specific): 755 Yosemite Ave., Ste. H

APN: 231-180-003

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: Ferass Abu Ghaban/Abdullah Taleb

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 only, 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:** 08-24-2016 **Title:** Planner

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

Resolution #_____

WHEREAS, the Merced City Planning Commission at its regular meeting of September 21, 2016, held a public hearing and considered **Conditional Use Permit #1214**, initiated by Ferass Abu Ghaban and Abdullah Taleb, applicants for Promenade Center, Limited Partnership, property owners. This application involves a request to allow the sale of beer and wine for on-site consumption at the Bobcat Diner, located at 755 E. Yosemite Avenue, Suite H, at the Promenade Shopping Center within Planned Development (P-D) #48 with a Neighborhood Commercial (CN) General Plan designation; also known as Assessor's Parcel Numbers 231-180-003; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #16-18; and,

NOW THEREFORE, 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 #16-26, and approve Conditional Use Permit #1214, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

ATTACHMENT I

PLANNING COMMISSION RESOLUTION # _____

Page 2

September 21, 2016

Adopted this 21st day of September 2016

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions: CUP#1214 Bobcat Diner (755 W. Yosemite Ste. H)

Conditions of Approval
Planning Commission Resolution # _____
Conditional Use Permit #1214

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments B and C of Staff Report #16-18.
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 applicable conditions set forth in Planning Commission 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 (with counsel selected by the City), 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 (with counsel selected by the City) 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. Alcoholic beverages shall not be allowed outside the building. A future outdoor seating area with alcohol service may be allowed with approval from both the Site Plan Review Committee and Alcoholic Beverage Control.
9. The restaurant shall meet all applicable Merced County Health Department requirements.
10. The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
11. This approval is for alcohol sales as an ancillary use to the primary restaurant only.
12. Request to operate as a nightclub, bar, or similar use shall require an additional review and approval from the Planning Commission (as required in the Zoning Ordinance).
13. 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.
14. Signs shall comply with the Master Sign Program for the Promenade Shopping Center.
15. Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.