

**CITY OF MERCED**  
**Planning & Permitting Division**

**STAFF REPORT:** #17-05

**AGENDA ITEM:** 4.2

**FROM:** Kim Espinosa,  
Planning Manager

**PLANNING COMMISSION**  
**MEETING DATE: Feb. 22, 2017**

**PREPARED BY:** Francisco Mendoza-Gonzalez,  
Planner

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**SUBJECT:** **Conditional Use Permit #1217**, initiated by Swaran Singh, on behalf of Cox Walker-Merced, A Partnership, property owner. This application involves a request to allow the sale of beer and wine for on-site consumption within a restaurant (Pizza Guys), located at 2800 G Street, within the Bear Creek Galleria. The subject site is generally located at the northeast corner of G Street and North Bear Creek Drive, within a Neighborhood Commercial (C-N) Zone. \*PUBLIC HEARING\*

**ACTION:** Approve/Disapprove/Modify

- 1) Environmental Review #17-01 (Categorical Exemption)
- 2) Conditional Use Permit #1217

**SUMMARY**

Pizza Guys is requesting Conditional Use Permit approval to serve beer and wine for on-site consumption as an ancillary use to the restaurant. Restaurants are a principally permitted use within a Neighborhood Commercial (C-N) Zone, but alcohol sales are a conditional use. Pizza Guys is located at 2800 G Street, near the northeast corner of North Bear Creek Drive and G Street, within the Bear Creek Galleria (Attachment A). 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 #17-01 (Categorical Exemption) and Conditional Use Permit #1217 (including the adoption of Resolution at Attachment G), subject to the following additional conditions:

- \*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachments B.
- \*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) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- \*5) 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.
- \*6) 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.
- 7) 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.
- \*8) The restaurant shall meet all applicable Merced County Health Department requirements.
- \*9) The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
- 10) This approval is for alcohol sales as an ancillary use to the primary restaurant only.
- 11) 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).
- 12) 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.
- 13) Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.

(\* ) Denotes non-discretionary conditions.

**PROJECT DESCRIPTION**

Pizza Guys occupies a 2,000-square foot tenant space within the Bear Creek Galleria, near the northeast corner of North Bear Creek Drive and G Street. This proposal does not include any modifications to the site plan, floor plan, or to the number of customer seats. The existing floor plan includes dining tables, a kitchen, restrooms, and an office. The restaurant serves pizzas, pastas, salads, and wings. The restaurant operates daily from 10:00 a.m. to 10:30 p.m., except for Fridays and Saturdays when it operates from 10:00 a.m. to 12:00 a.m.

The applicant is requesting Conditional Use Permit approval to serve 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 nightclub. 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, this 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):**

<b>Surrounding Land</b>	<b>Existing Use of Land</b>	<b>City Zoning Designation</b>	<b>City General Plan Land Use Designation</b>
North	Evangelical Free Church	Low Density Residential (R-1-6)	Low Density Residential (LD)
South	PC Tech (across Bear Creek)	Office Commercial (C-O)	Commercial Office (CO)
East	Single Family Homes	Low Density Residential (R-1-6)	Low Density Residential (LD)
West	Bear Creek Plaza (across G Street)	Planned Development (P-D) #2	Commercial Office (CO)

**BACKGROUND**

The Bear Creek Galleria (formerly known as the College Green Shopping Center) was originally developed while in County jurisdiction. The shopping center was annexed into the City in April 1976. At that time, there were several outstanding legal non-conforming issues with the site. In 1988, the anchor store (Save Mart) was divided into twenty small shops. Since then, there have been several remodels and additions that have helped bring the shopping center up to code with respect to vehicle access, parking, signage, and landscaping.

In 1991, the Planning Commission approved CUP #812 allowing Hungry Howie’s Restaurant the right to serve beer and wine for onsite consumption at 2800-2804 G Street (the subject site). According to City business license records and the State’s alcohol license records, Hungry

Howie's Restaurant never obtained an alcohol license. CUP #812 has since expired and Pizza Guys must obtain a new conditional use permit to serve beer and wine at this location.

**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 Neighborhood Commercial (C-N) Zone with approval of a Conditional Use Permit.

**Merced Police Department**

- B) Between 2/1/2016 and 1/31/2017, the Merced Police Department recorded 272 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 31 incidents for the time period studied). As shown on the attached Incident Map (Attachment E), the majority of those incidents occurred away from the Bear Creek Galleria within the residential neighborhoods located north and east of the subject site. The number of incidents reported City-wide for the same time period was 69,000 (approximately). Based on the total number of calls within the City, the 272 calls to this area equals 0.39 % of the overall crime within the City. As shown on the attached Crime Hot Spot Map for City of Merced (Attachment C), crime rates in this area are considered moderate 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 2/1/2016-1/31/2017**

<b>Incident/Case Type</b>	<b>Number of Incidents</b>
DUI	5
Public Intoxication	1
Disturbance (assaults)	13
MMC*	12
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. Based on the information provided by the Police Department, 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) This request will have no impact on parking as the business is existing and the applicant will not be adding seats to their restaurant. Currently there are 161 shared parking spaces

for the businesses at the Bear Creek Galleria. Parking is available at the center of the shopping center and along the eastern side of the parcel. Future building expansions, request for additional seating, and land uses may be limited by parking availability.

### **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, there are residential properties to the north and east (across McCombs) of the subject site (between 150 and 225 feet away from Pizza Guys). In addition, there is a church located north of the Bear Creek Galleria. Even though these sensitive uses are in close proximity to the Bear Creek Galleria, there are several design measures that help reduce the impacts that the shopping center may have on the neighborhood. The Bear Creek Galleria is enclosed by a solid block wall that prevents both vehicle and pedestrian access between the shopping center and the neighborhood. In addition, the buildings are oriented away from neighborhood so that the backside of the buildings are facing the church and the single-family homes. Lastly, there is 30-75 feet of buffer space (e.g. parking spaces and driving aisles) along the north and east sides of the parcel (abutting the sensitive uses) that help reduce impacts regarding noise and lighting. Due to these design measures, staff finds that this request will generate no significant impacts to the area and that 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 #13).

### **Environmental Clearance**

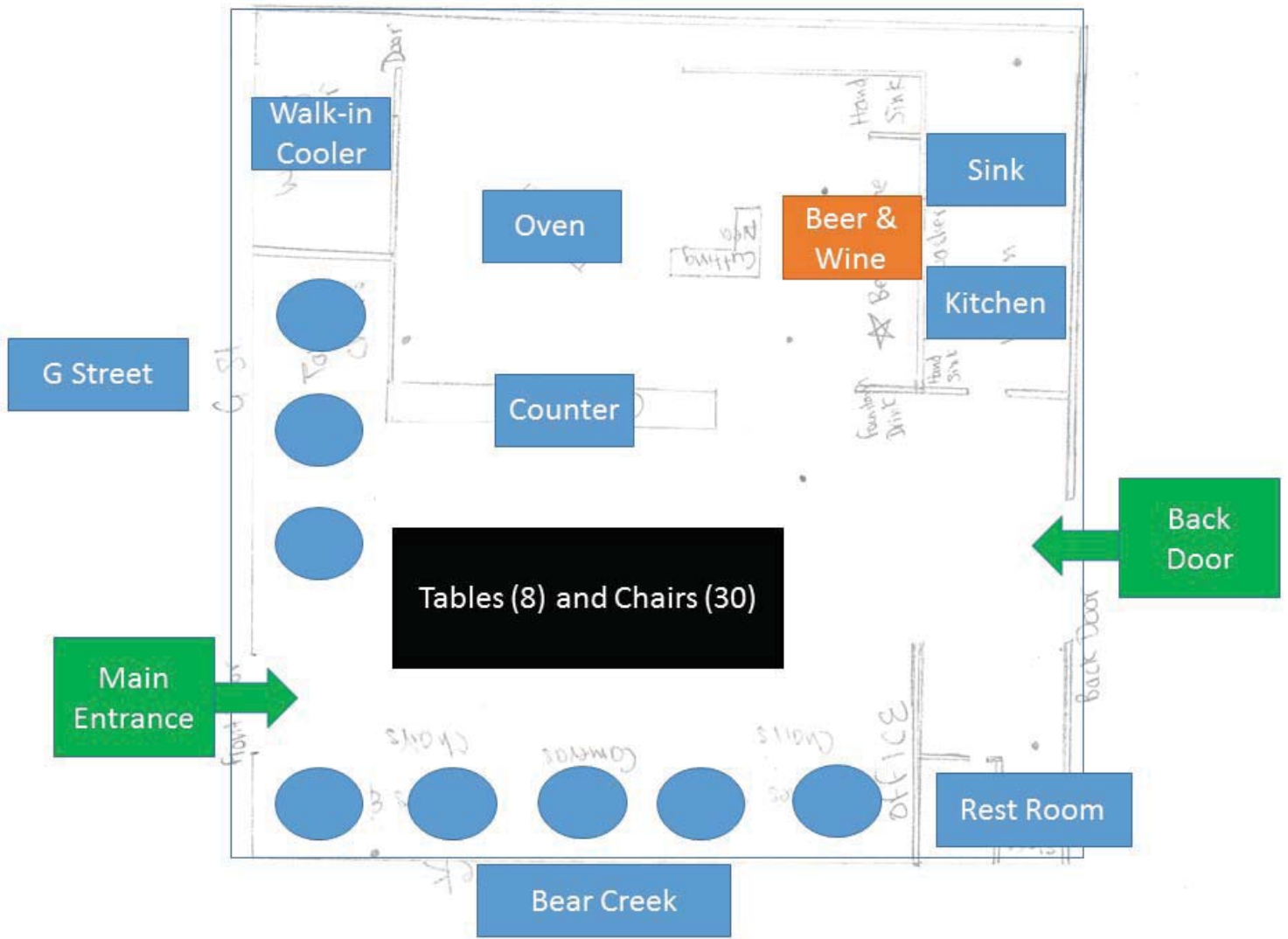
- E) Planning staff has conducted an environmental review (#17-01) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment F).

### **Attachments:**

- A) Location Map
- B) Floor Plan
- C) Crime Hot Spot Map for the Entire City
- D) Incident Map for the Entire City
- E) Incident Map Near Subject Site (500-foot Radius)
- F) Categorical Exemption
- G) Draft Planning Commission Resolution

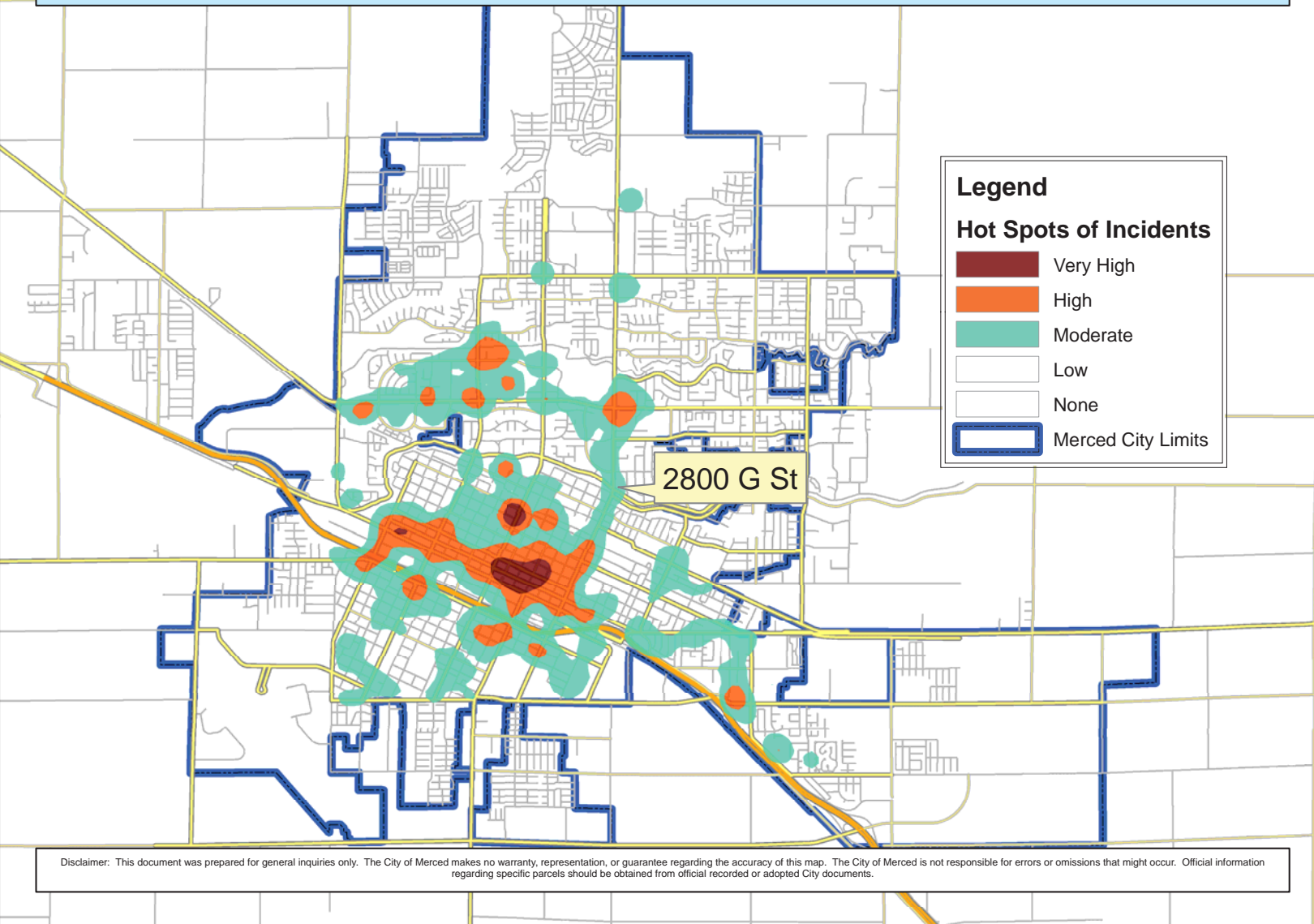


**ATTACHMENT A**



**ATTACHMENT B**

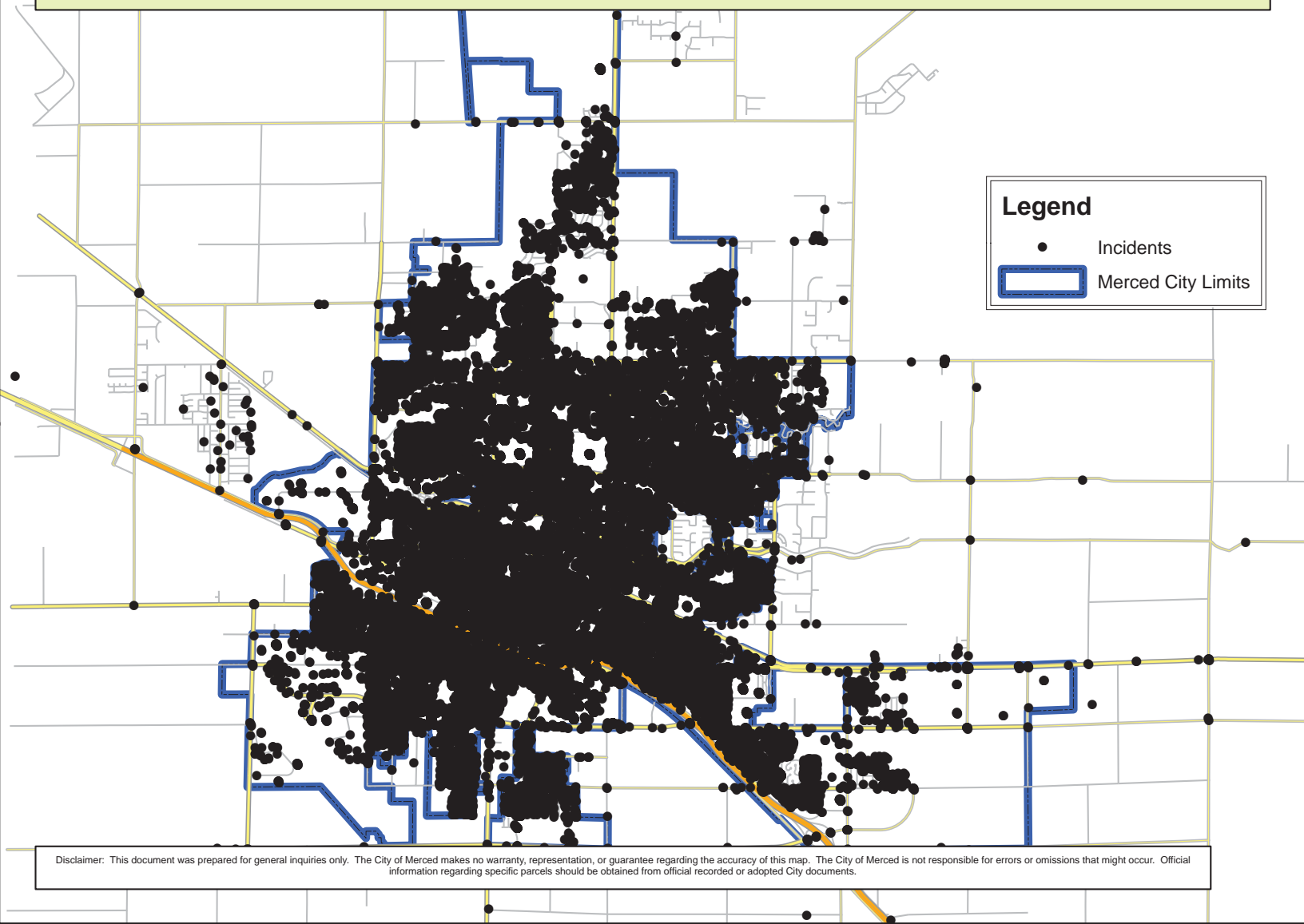
# Hot Spots of Police Incidents 2/1/16 - 1/31/17



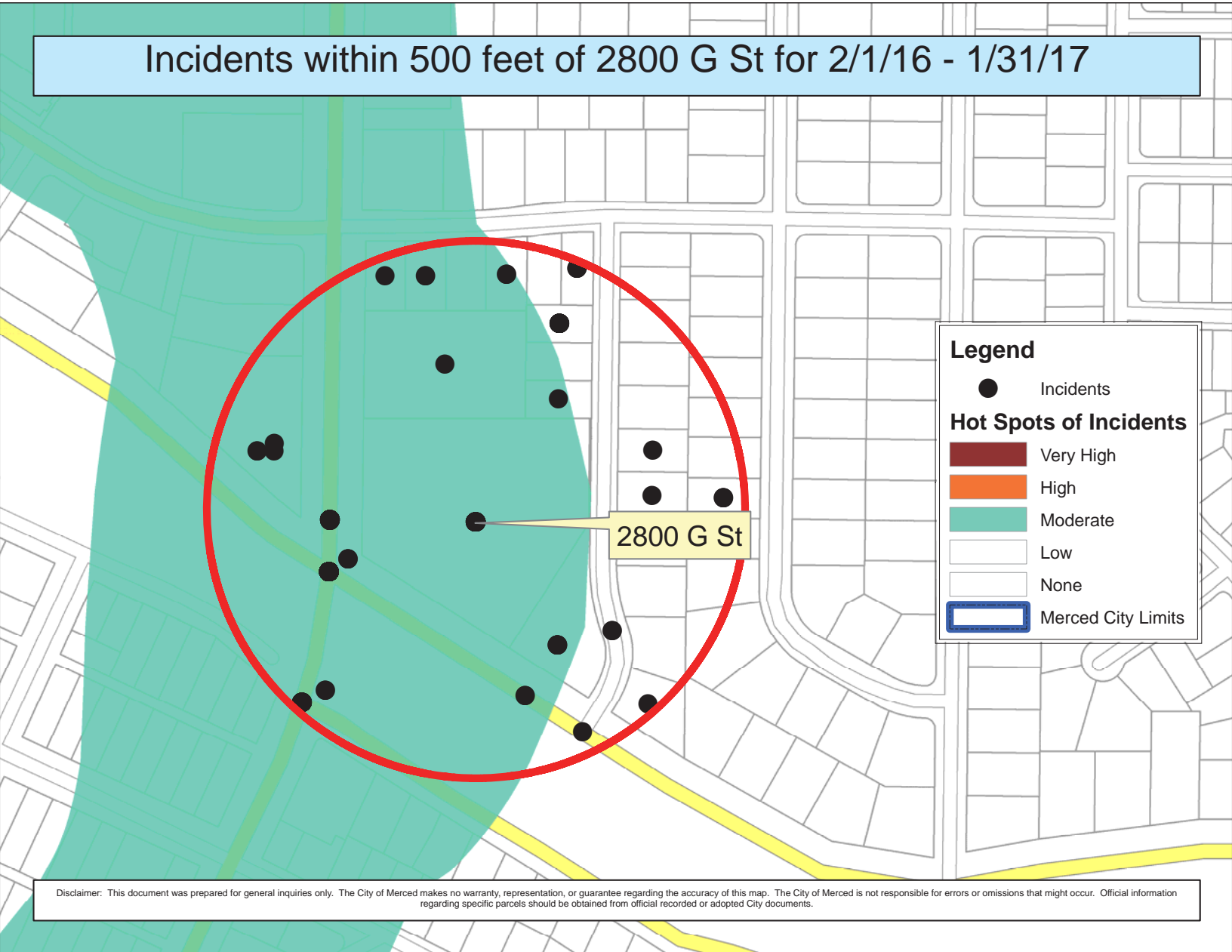
Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should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



69,000+ Police Incidents for 2016



# Incidents within 500 feet of 2800 G St for 2/1/16 - 1/31/17



**NOTICE OF EXEMPTION**

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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 #1217 (Environmental Review #17-01)

**Project Applicant:** Swaran Singh

**Project Location (Specific):** 2800 G Street

**APN:** 007-171-013

**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:** Swaran Singh

**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:** 01-26-2017 **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**

**Resolution #\_\_\_\_\_**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of February 22, 2017, held a public hearing and considered **Conditional Use Permit #1217**, initiated by Swaran Singh, on behalf of Cox Walker-Merced, A Partnership, property owner. This application involves a request to allow the sale of beer and wine for on-site consumption within a restaurant (Pizza Guys), located at 2800 G Street, within the Bear Creek Galleria. The subject site is generally located at the northeast corner of G Street and North Bear Creek Drive, within a Neighborhood Commercial (C-N) Zone; also known as Assessor's Parcel Number 007-171-013; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through E of Staff Report #17-05; 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 #17-01, and approve Conditional Use Permit #1217, 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 G**

PLANNING COMMISSION RESOLUTION # \_\_\_\_\_

Page 2

February 22, 2017

Adopted this 22<sup>nd</sup> day of February 2017

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Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

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Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions: CUP#1217 Pizza Guys (2800 G Street)

**Conditions of Approval**  
**Planning Commission Resolution # \_\_\_\_\_**  
**Conditional Use Permit #1217**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachments B of Staff Report #17-05.
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. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. 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.

6. 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.
7. 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.
8. The restaurant shall meet all applicable Merced County Health Department requirements.
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11. 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).
12. 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.
13. Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.

n:\shared\planning\PC Resolutions: CUP #1217 Exhibit A