

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #17-13

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Oct. 18, 2017

PREPARED BY: Francisco Mendoza-Gonzalez,
Planner

SUBJECT: **Conditional Use Permit #1219**, initiated by Madira Land Convenience Store on behalf of Olivewood Shopping Center, LLC, property owner. This application involves a request to sell beer and wine for off-site consumption at Madira Land Convenience Store, generally located on the south side of Olive Avenue, approximately 400 feet east of Austin Avenue (at 1340 W. Olive Ave., Ste. #102), within Planned Development (P-D) #16 with a Regional/Community Commercial (RC) General Plan designation.
PUBLIC HEARING

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #17-09 (Categorical Exemption)
- 2) Conditional Use Permit #1219

SUMMARY

Madira Land Convenience Store is requesting approval to sell beer and wine for off-site consumption [Alcoholic Beverage Control (ABC) Type 20 Alcohol License] at 1340 W. Olive Avenue, Suite #102 (1,320 square feet). The subject site is located within the Olivewood Shopping Center inside a stand-alone building located near the north/center portion of the shopping center, west of the driveway along Olive Avenue (Attachment A). A Conditional Use Permit is required for any business that wants to sell alcoholic beverages for off-site consumption in a building of 20,000 square feet or less. Section 20.44.010 of the Zoning Ordinance requires the Planning Commission to make specific findings related to the business's potential impacts on sensitive uses, economic/societal welfare, and crime rates (these findings are shown on the "Alcohol Sales" section of this staff report).

In addition, because the subject site is located within an Alcoholic Beverage Control (ABC) Census Tract that is over-concentrated with alcohol licenses for off-site consumption, this request will require a Finding of Public Convenience or Necessity by the City Council. The Police Department has determined that they would support a Type 20 ABC License if specific conditions are included to reduce the potential for alcohol-related incidents. Staff is recommending approval of this application subject to the conditions contained in this staff report.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #17-09 (Categorical Exemption) and Conditional Use Permit #1219 (including the adoption of the Resolution at Attachment M), subject to the following conditions:

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) -- Attachment C, except as modified by the conditions.
- *2) All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
- *3) 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.
- *4) 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.
- 5) Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
- 6) All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.
- 7) The premises shall remain clean and free of debris and graffiti at all times. Any damaged materials shall be replaced by matching materials.
- 8) A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.

- 9) The proprietor and/or successors in interest and management shall be prohibited from advertising or promoting beer & wine and/or distilled spirits on the building or in the windows. No self-illuminated advertising for beer or wine shall be permitted.
- 10) No beer shall be displayed or stored outside of the cooler areas.
- 11) No display or sale of beer or wine shall be made from an ice tub.
- 12) Employees on duty between the hours of 9 p.m. and 11 p.m. shall be at least 21 years of age to sell alcohol.
- 13) Alcohol sales shall cease by 12:00 a.m. regardless of the business hours for the store in general.
- *14) The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws, and other nuisance-related issues.
- 15) The area within the convenience market dedicated to the display and sale of alcoholic beverages beer shall not be more than 3 cooler spaces (typical of those found in a grocery store or convenience market) or 65 square feet. The area dedicated to the display and sale of wine on free-standing shelves or coolers shall not exceed 40 square feet.
- 16) The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace, and disorderly conduct result from the proposed land use, the conditional use permit may be subject to review and revocation by the City of Merced after a public hearing and in conformance with the procedures outlined in the Merced Municipal Code.
- 17) No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton.
- 18) The business shall comply with all applicable requirements from the Merced County Health Department.
- *19) Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, the business (for the convenience market) shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.
- 20) This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.
- 21) A permanent outdoor trash receptacles shall be installed near the main entrance to the convenience market.

(* Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The project site is located inside a standalone building within the Olivewood Shopping Center. The applicant, Madira Land Convenience Store, will be taking over a 1,320-square-foot suite that

has remained vacant over the past few years. The remodel includes installing new free-standing shelves, a walk-in refrigerator, vending machines, hot food counters, a storage room, bathrooms, and an office (Attachment C). The building footprint will remain the same as will the site plan.

A convenience market is considered a principally permit use, but the applicant’s request to sell alcohol for off-site consumption requires Planning Commission approval of a Conditional Use Permit and the City Council adopting a Finding of Public Convenience or Necessity (scheduled to be reviewed on November 6, 2017). Approval of this conditional use permit would allow Madira Land Convenience Store to sell a maximum of 105 square feet of beer and wine (Condition #15) or 8% of the floor space. Alcohol would be stocked inside the walk-in refrigerator on the northeast side of the suite, diagonal from both the cashier and main entrance to the store. Wine would be displayed on the free-standing shelves closest to the alcohol. Police staff has reviewed this proposal and they do not anticipate this request to cause a significant adverse effect on the socio and economic well-being of the neighborhood, or to have a significant adverse effect on police resources.

Surrounding Uses
(Attachment A)

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	Apartments (across Olive Avenue)	Planned Development (P-D) #10	Low to Medium Residential Density (LMD)
South	Mountain Mike’s Pizza (across parking lot)	Planned Development (P-D) #16	Regional/Community Commercial (RC)
East	GameStop	Planned Development (P-D) #16	Regional/Community Commercial (RC)
West	AT&T	Planned Development (P-D) #16	Regional/Community Commercial (RC)

BACKGROUND

Subject Site:

In 2003, the Planning Commission approved CUP #1030 allowing the construction of a 6,000-square-foot standalone building within the Olivewood Shopping Center. The construction of this site completed the development of the masterplan for this shopping center. This proposal included three suites, new landscaping, and new parking spaces. The outer suites are still occupied by their original tenants, AT&T and Game Stop. The middle suite (e.g. the subject site) was originally occupied by Payday Loan until 2007, but, according to City records, has remained vacant since then.

Ordinance:

Zoning Ordinance #94-01 was adopted by the City Council on June 19, 1995. This amended the Merced Municipal Code by requiring a conditional use permit prior to obtaining a license from ABC for the sale of alcoholic beverages for off-site consumption (for businesses under 20,000 square feet). City records show that the ordinance was primarily directed at the proliferation of alcoholic beverage establishments, such as liquor stores and convenience markets throughout central and south Merced. In addition, Zoning Ordinance #94-01 established a criteria by which to evaluate requests to sell alcoholic beverages for off-site consumption. The details of those criteria are described in the Findings section of this staff report. These findings and procedures were not changed in the recent Zoning Ordinance Update in 2016.

FINDINGS/CONSIDERATIONS:

General Plan/Zoning Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Regional/Community Commercial (RC) and the zoning classification of Planned Development (P-D) #16 with approval of a Conditional Use Permit.

Alcohol Sales

- B) This request requires a Conditional Use Permit, because Madira Land Convenience Store is less than 20,000 square feet in size. In addition, alcohol sales require a Finding of Public Convenience or Necessity from the City Council, because the subject site is located within an ABC Census Tract that is considered over-concentrated by ABC standards. The City Council will take action on the Finding of Public Convenience or Necessity on November 6, 2017.

In order for the Planning Commission to approve or deny a request for the sale of alcoholic beverages for off-site consumption, they must consider the following criteria and make findings to support or deny each criteria per MMC 20.44.010:

Criteria #1

The proposed use will not result in an "undue concentration" of establishments dispensing alcoholic beverages as defined by Section 23958 and 23958.4 of the California Business and Professional Code and giving consideration to the California Department of Alcoholic Beverage Control's guidelines related to number and proximity of such establishments within a 1,000-foot radius of the site.

Finding #1:

The subject site is located within Alcoholic Beverage Control Census Tract #10.03. In checking with the State of California Alcoholic Beverage Control, this census tract is allowed three off-sale licenses, but there are currently five issued (Attachment F). Based on these results, this census tract is considered over-concentrated with businesses selling alcohol for off-site consumption. Even though Census Tract #10.03 has five businesses serving alcohol for off-site consumption (Type 20 ABC License), most of these businesses are spread fairly evenly throughout the census tract with an average distance of about 1,200 feet from each other (Attachment G).

Criteria #2

The proposed use will not adversely affect the economic and societal welfare of the pertinent community or residentially-zoned community in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds, and other similar uses; and other establishments dispensing, for sale or other considerations, alcoholic beverages including beer and wine.

Finding #2:

Residential uses (duplexes and multi-family) are located within 200 feet of the subject site, across Olive Avenue (Attachment A). There are no other sensitive uses located within 1,000 feet of the subject site. The nearest sensitive use (besides residential properties) is Fahrens Park, which is located approximately 2 miles away from the subject site.

Criteria #3

The crime rate in the area of the proposed site. Particular attention shall be given to those crimes involving public drunkenness, the illegal sale of narcotics, disturbing the peace, and disorderly conduct.

Finding #3:

Between September 1, 2016, and September 12, 2017, the Merced Police Department recorded 417 incidents within a 500-foot radius of the subject site. The table below shows the number of incidents within that area involving public intoxication, assaults, MMC violations, and narcotics violations (totaling 28 incidents during the 12-month period). As shown on the attached Incident Maps (Attachments I, J, and K), the majority of those incidents occurred north of the subject site, within a residential zone. The number of incidents reported City-wide for the same time period was 71,637. Based on the total number of calls within the City, the 417 calls to this area equals 0.58% of the overall calls for service within the City. As shown on the attached Crime Hot Spot Map for the City of Merced (Attachment H), crime rates in this area are considered high compared to the rest of the City. However, Police staff believe that most of those incidents were not related to alcohol. Alcohol sales for off-site consumption, therefore, will not likely have a significant impact on Police Department resources.

Incidents and Cases Reported (September 1, 2017 – September 12, 2017)

Incident/Case Type	Number of Incidents
Public Intoxication	4
Disturbance (assaults)	6
MMC*	17
Narcotics violations	1

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

Planning staff consulted with the Merced Police Department regarding alcohol sales at this location. The Police Department did not have any significant concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales

for off-site consumption. Based on the information provided by the Police Department, and the fact that alcohol sales are currently sold within the Olivewood Shopping Center, staff does not anticipate that the approval of this request would adversely affect the economic and social welfare of the surrounding area.

Neighborhood Impact/Interface

- C) The subject site is surrounded by residential and commercial uses. The properties to the east and west are occupied by AT&T and Game Stop respectively. The building's to the south are part of a shopping center that is occupied by many businesses that includes Dollar Tree, Food Max, Mountain Mike's, Harbor Freight Tools, Hobby Lobby, etc. There are duplex and multi-family units to the north of the subject site (across Olive Avenue). There are no City Parks or School within 1,000 feet of the subject site. Madira Land Convenience Store is located within an area that has high crime rates. However, the Police Department does not have any particular issues with this request. To improve the safety of patrons, employees, and the neighborhood in general, the applicant is proposing to install interior and exterior surveillance cameras, provide staff with training regarding alcohol sales, and limit the store's hours of operation until 10:00 p.m. (Condition #13 would allow alcohol sales until 12:00 a.m.).

Given that nearby FoodMaxx and Dollar Tree have been selling beer and wine for approximately several years, this request to sell alcohol for off-site consumption would not create any unusual circumstances for the neighborhood. A public hearing notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. As of the date that this report was prepared, staff did not receive any comments from the community about this project.

Signage

- D) The applicant is not proposing to make any changes to signage at this time. However, staff is recommending that certain restrictions regarding the advertisement of alcohol be included with this permit. Said restrictions would prohibit the advertisement of beer, wine, and distilled spirits on the building walls, windows, and parking lot (Conditions #8 and #9). A formal request for permanent signage shall be reviewed with a building permit application and shall require compliance with the North Merced Sign Ordinance.

Site Plan

- E) The applicant is not requesting any changes to site plan at this time. Future changes to the site plan would require both site plan approval and building permit applications reviewed by City staff for compliance with Development Standards.

Because this suite was originally occupied by a professional use, it was not expected that a significant amount of trash would be generated from this site. However, staff is including a condition requiring at least one permanent outdoor trash receptacle to accommodate the trash that is generated from items sold at the convenience store [e.g. hot foods, packaged foods, beverages, etc. (Condition #21)]. The trash enclosure should be placed near the main entrance to the building on the south elevation (Attachment D).

Parking

- F) Parking for this site is provided through shared parking for the entire Olivewood Shopping Center. Parking was initially reviewed and approved by the Planning Commission before the subject site was constructed in 2004. Additional parking will not be required because the new convenience market requires the same amount of parking as the original tenant for this suite (Payday Loans).

Environmental Clearance

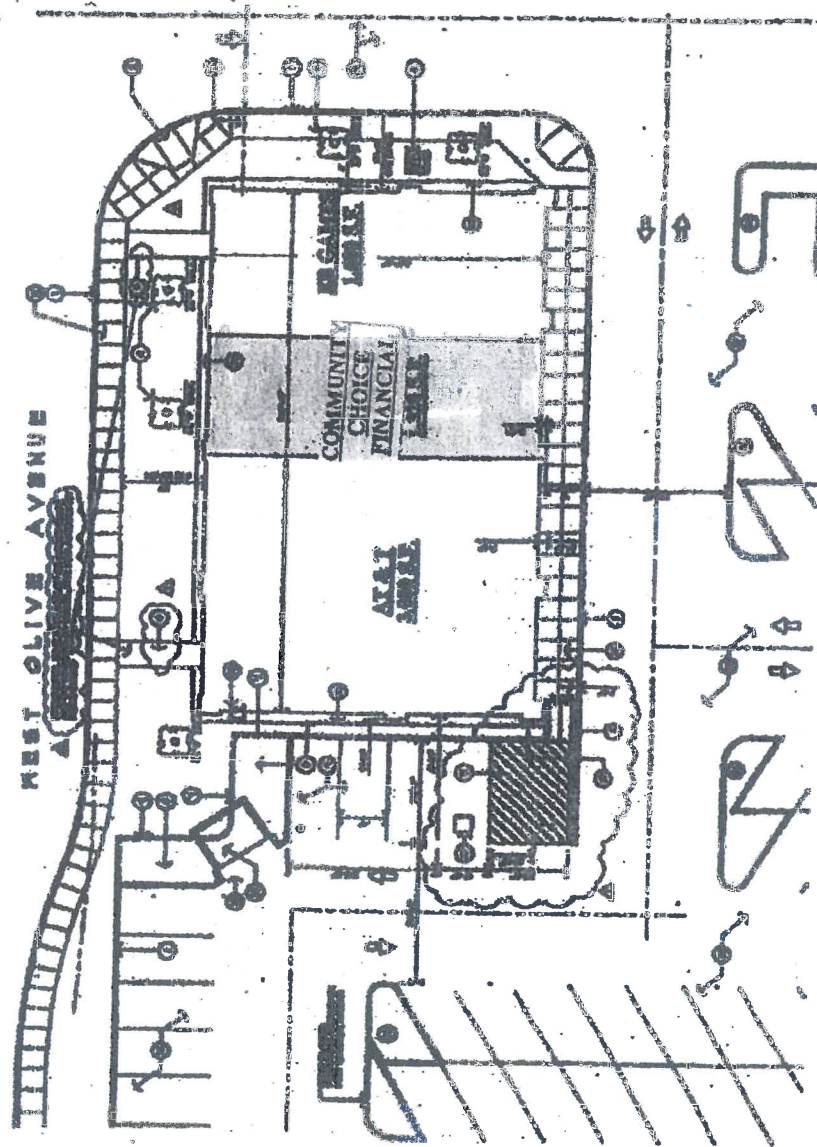
- G) Planning staff has conducted an environmental review (Environmental Review #17-09) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) is being recommended (Attachment L).

Attachments:

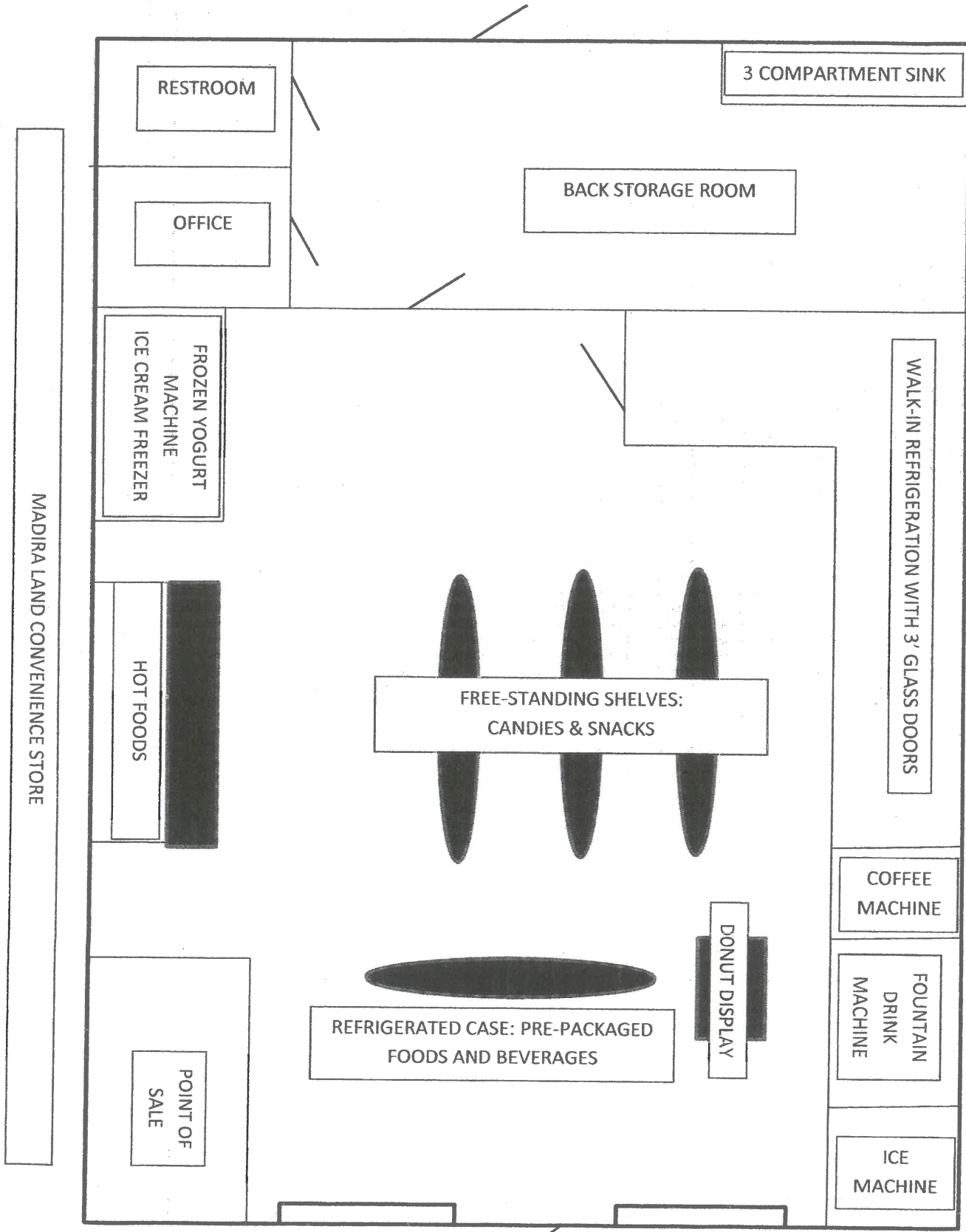
- A) Location Map
- B) Site Plan
- C) Floor Plan
- D) Elevation (Main Entrance)
- E) ABC License Types
- F) Census Tract 10.03 License Chart with Business Address
- G) Census Tract 10.03 Map
- H) Crime Hot Spot Map for the Entire City
- I) Incident Map Near Subject Site (500-foot Radius)
- J) Incident Map (Residential)
- K) Incident Map (Shopping Center)
- L) Categorical Exemption
- M) Draft Planning Commission Resolution



ATTACHMENT A



ATTACHMENT B





ATTACHMENT D



FOR LEASE
Call Steve King
408.390.3592
RETAIL SPACE

102

OPEN



OPEN

OPEN

OPEN

Department of Alcoholic Beverage Control
**COMMON ABC LICENSE TYPES
 AND THEIR BASIC PRIVILEGES**

State of California

LICENSE TYPE	DESCRIPTION
01	BEER MANUFACTURER - (Large Brewery) Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	WINEGROWER - (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery) Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	ON SALE BEER & WINE – EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	ON SALE BEER & WINE – PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	ON SALE GENERAL – EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	ON SALE GENERAL – PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	ON SALE GENERAL – SEASONAL - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.





**California Department of Alcoholic Beverage
Control
For the County of MERCED - (Off-Sale Licenses)
and Census Tract = 10.03**

Report as of 10/11/2017

License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1) 278031	ACTIVE	20	1/21/1993	12/31/2017	GONGCO FOODS 1115 W OLIVE AVE MERCED, CA 95348 Census Tract: 0010.03		3440 BORDER LINKS VISALIA, CA 93291	2406
2) 331733	ACTIVE	21	7/29/1997	6/30/2018	SAVE MART SUPERMARKETS 1300 W OLIVE AVE MERCED, CA 95348-1663 Census Tract: 0010.03	FOOD MAXX 487	PO BOX 4278, ATTN: NIKKI BORUP MODESTO, CA 95352-4278	2406
3) 468171	ACTIVE	20	10/27/2008	6/30/2018	7 ELEVEN INC 1107 LOUGHBOROUGH DR MERCED, CA 95348 Census Tract: 0010.03	7-ELEVEN STORE 2368	PO BOX 219088, ATT: 7 ELEVEN LICENSING DALLAS, TX 75221-9088	2400
4) 505319	ACTIVE	21	12/24/2010 10:21:13 AM	6/30/2018	WAL MART STORES INC 3055 LOUGHBOROUGH DR MERCED, CA 95348-1119 Census Tract: 0010.03	WAL MART STORE 2039	702 SW 8TH ST, DEPT 8916 ATTN: TIM FARRAR BENTONVILLE, AR 72716-0500	2406
5) 570861	ACTIVE	20	8/23/2016 1:59:10 PM	6/30/2018	7 ELEVEN INC 1107 W OLIVE AVE MERCED, CA 95348-1953 Census Tract: 0010.03	7 ELEVEN #37974H	PO BOX 219088, ATT: 7 ELEVEN LICENSING DALLAS, TX 75221-9088	2406

--- End of Report ---

For a definition of codes, view our [glossary](#).



California Department of

Alcoholic Beverage Control

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License Query System - Map Query

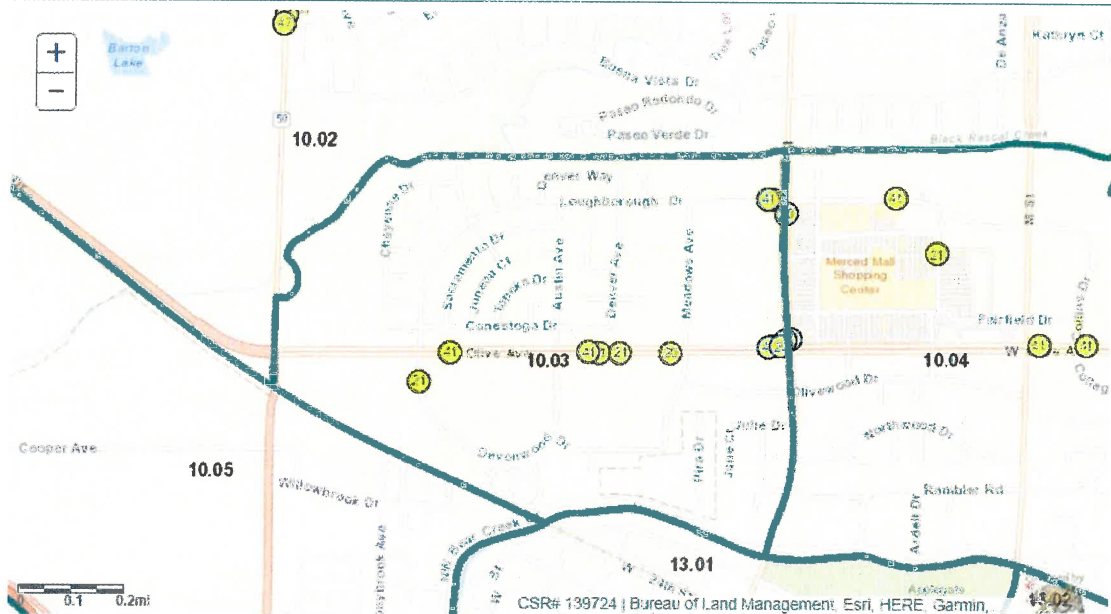
Search for a specific

License Number:

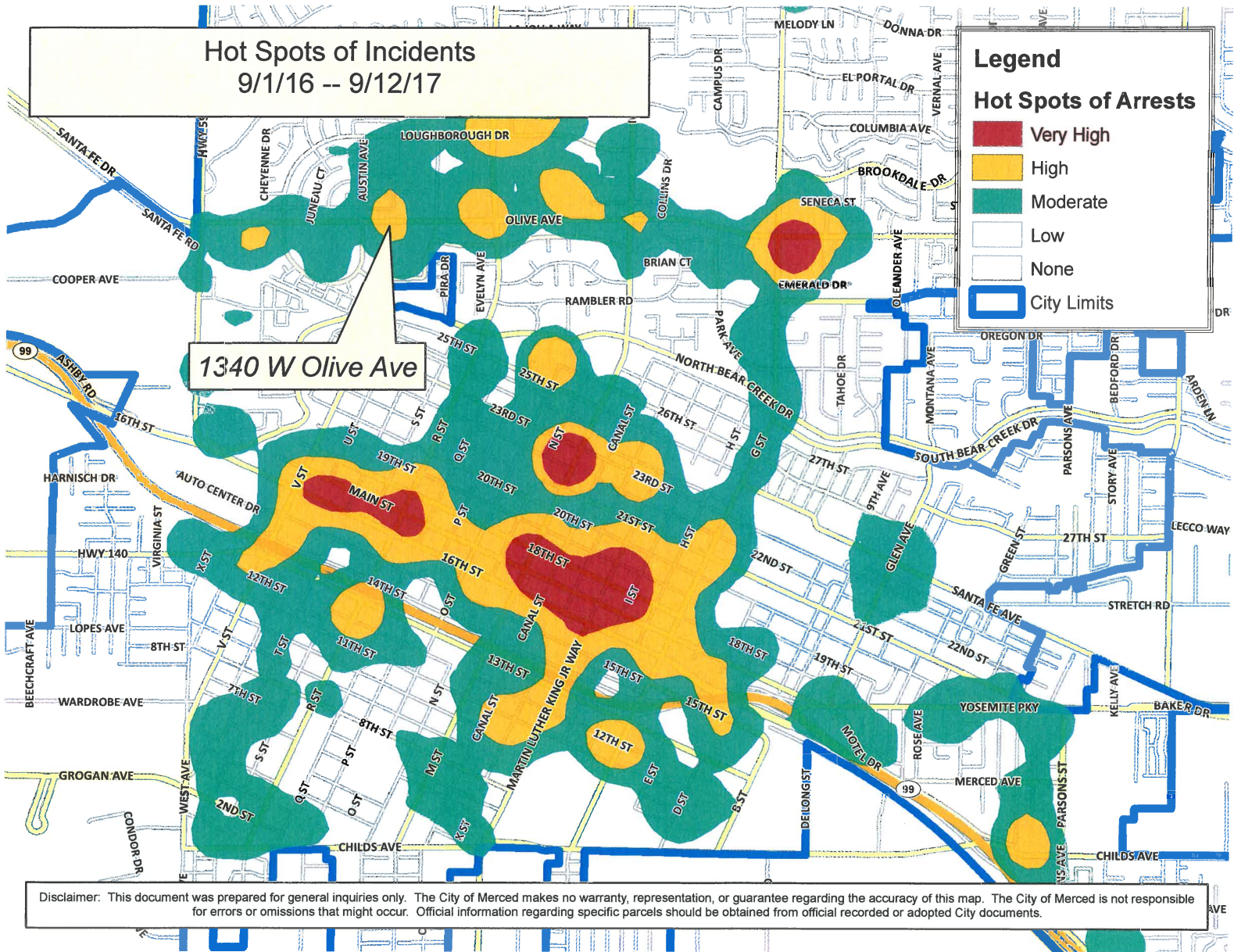
Or, locate a general area by entering:

Address:

Census Tract: City:



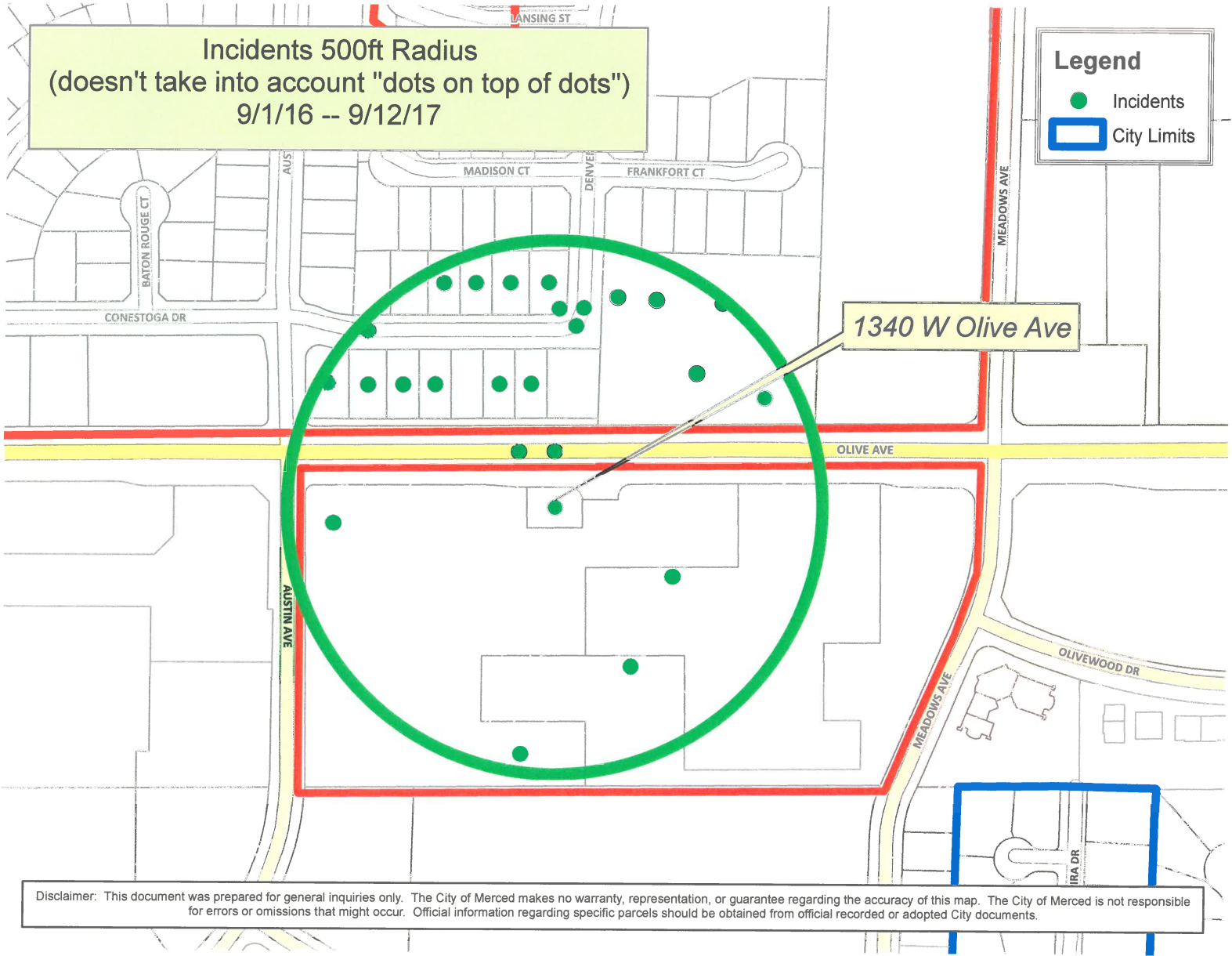
**Hot Spots of Incidents
9/1/16 -- 9/12/17**



Incidents 500ft Radius
(doesn't take into account "dots on top of dots")
9/1/16 -- 9/12/17

Legend

- Incidents
- ▭ City Limits

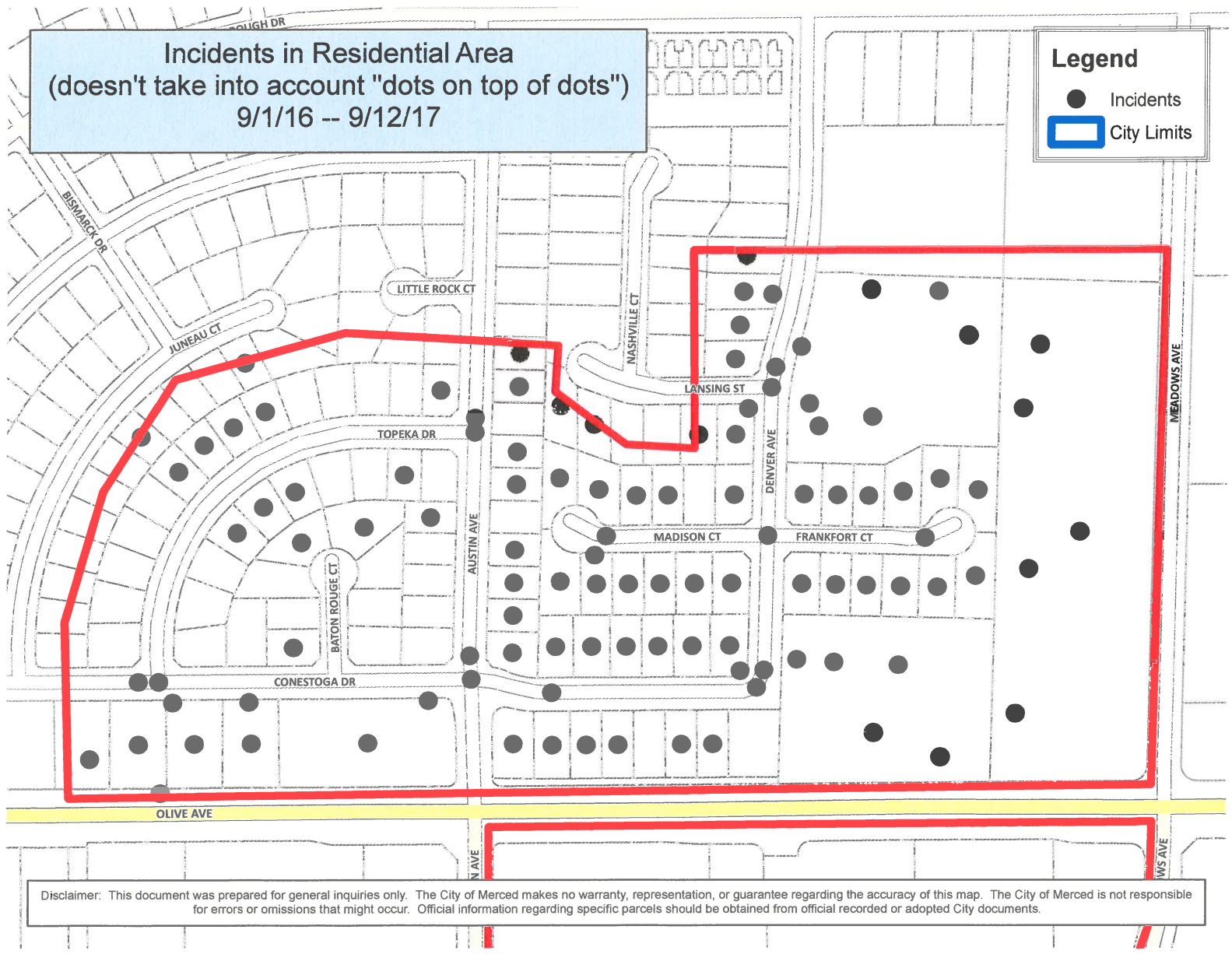


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Incidents in Residential Area
(doesn't take into account "dots on top of dots")
9/1/16 -- 9/12/17

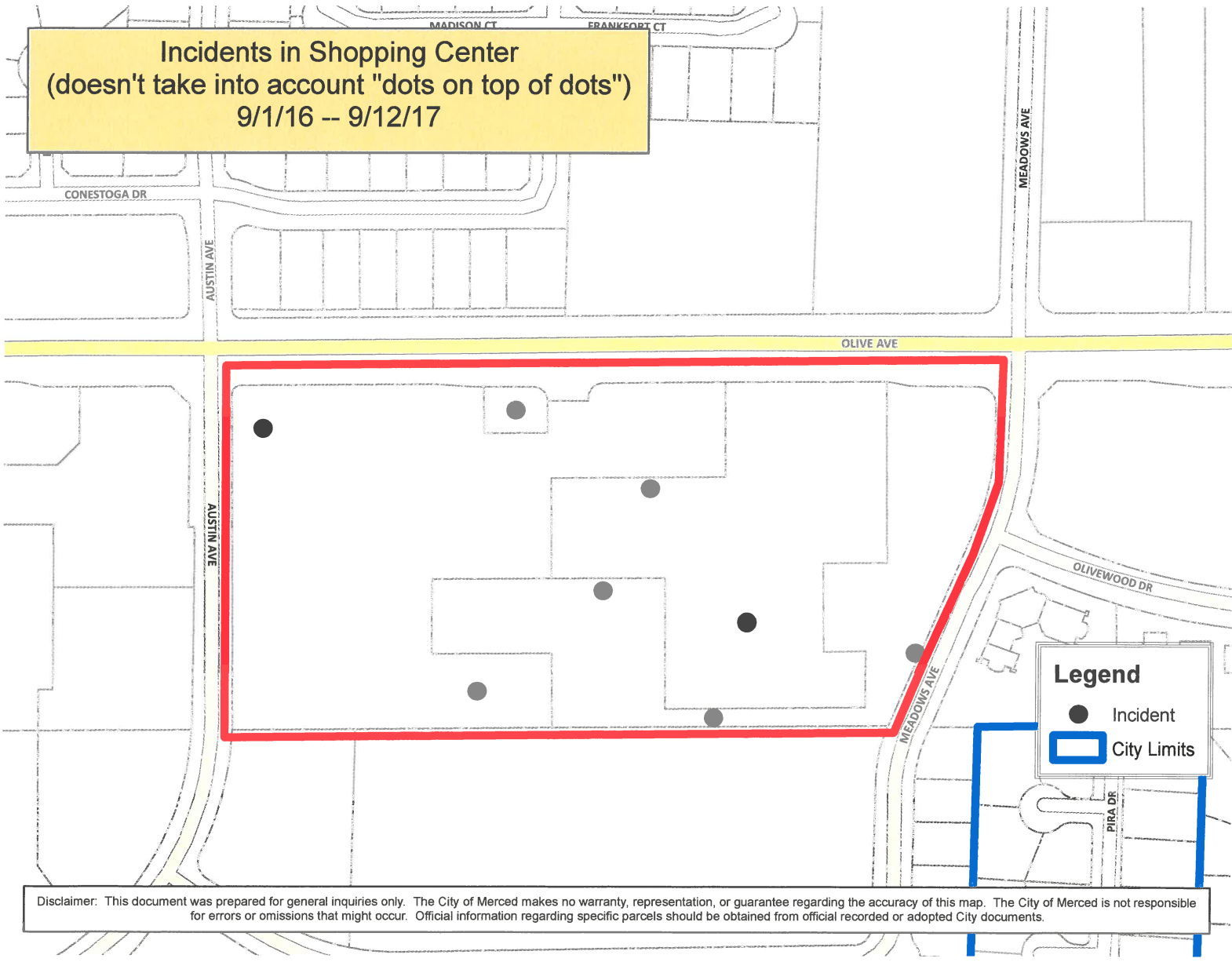
Legend

- Incidents
- ▭ City Limits



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Incidents in Shopping Center
(doesn't take into account "dots on top of dots")
9/1/16 -- 9/12/17



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: CUP #1219 (Environmental Review #17-09)

Project Applicant: Madira Land Convenience Store/Randhawa, LLC

Project Location (Specific): 1340 W. Olive Ave., Ste. #102 APN: 058-230-023

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: Madira Land Convenience Store/Randhawa, LLC

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));
- X 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/exterior alterations with a land use request to sell alcohol for off-site consumption, 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:** 9-12-2017 **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 October 18, 2017, held a public hearing and considered **Conditional Use Permit #1219**, initiated by Madira Land Convenience Store on behalf of Olivewood Shopping Center, LLC, property owner. This application involves a request to sell beer and wine for off-site consumption at Madira Land Convenience Store, generally located on the south side of Olive Avenue, approximately 400 feet east of Austin Avenue (at 1340 W. Olive Ave., Ste. #102), within Planned Development (P-D) #16 with a Regional/Community Commercial (RC) General Plan designation; also known as Assessor's Parcel Number 058-230-023; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through G of Staff Report #17-13; 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 #17-09, and approve Conditional Use Permit #1219, 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 M

PLANNING COMMISSION RESOLUTION # _____

Page 2

October 18, 2017

Adopted this 18th day of October 2017

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions: CUP#1219 Madira Land Convenience Store (1340 W Olive Ave Ste 102)

Conditions of Approval
Planning Commission Resolution # _____
Conditional Use Permit #1219

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) -- Attachment C of Staff Report #17-13, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
3. 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.

4. 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.
5. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
6. All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.
7. The premises shall remain clean and free of debris and graffiti at all times. Any damaged materials shall be replaced by matching materials.
8. A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
9. The proprietor and/or successors in interest and management shall be prohibited from advertising or promoting beer & wine and/or distilled spirits on the building or in the windows. No self-illuminated advertising for beer or wine shall be permitted.
10. No beer shall be displayed or stored outside of the cooler areas.
11. No display or sale of beer or wine shall be made from an ice tub.
12. Employees on duty between the hours of 9 p.m. and 11 p.m. shall be at least 21 years of age to sell alcohol.
13. Alcohol sales shall cease by 12:00 a.m. regardless of the business hours for the store in general.
14. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws, and other nuisance-related issues.
15. The area within the convenience market dedicated to the display and sale of alcoholic beverages beer shall not be more than 3 cooler spaces (typical of those found in a grocery store or convenience market) or 65 square feet. The area dedicated to the display and sale of wine on free-standing shelves or coolers shall not exceed 40 square feet.

16. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace, and disorderly conduct result from the proposed land use, the conditional use permit may be subject to review and revocation by the City of Merced after a public hearing and in conformance with the procedures outlined in the Merced Municipal Code.
17. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton.
18. The business shall comply with all applicable requirements from the Merced County Health Department.
19. Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, the business (for the convenience market) shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.
20. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.
21. A permanent outdoor trash receptacles shall be installed near the main entrance to the convenience market.

n:shared:planning:PC Resolutions: CUP #1219 Exhibit A