

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #17-17

AGENDA ITEM: 4.3

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Dec. 6, 2017

PREPARED BY: Francisco Mendoza-Gonzalez,
Planner

SUBJECT: **Modification to Conditional Use Permit #1214**, initiated by Ferass Abu Ghaban and Abdullah Taleb, applicant for Promenade Center, Limited Partnership, property owner. This application involves a request to modify an existing beer and wine ABC License to include the sale of liquor for onsite consumption at the Bobcat Diner, located at 755 E. Yosemite Avenue, Suite H, within the Promenade Shopping Center. The subject site is generally located at the northwest corner at Yosemite Avenue and Paulson Road, with a zoning classification of Planned Development (P-D) #48 and a General Plan designation of Neighborhood Commercial (CN).
PUBLIC HEARING

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #17-16 (Categorical Exemption)
- 2) Modification to Conditional Use Permit #1214

SUMMARY

In 2016, the Planning Commission approved Conditional Use Permit #1214 to allow the Bobcat Diner to sell beer and wine for onsite consumption, secondary to their primary restaurant. The applicant is requesting approval to modify their existing conditional use permit to include the sale of liquor. The 2,184-square-foot restaurant is located within the northwest corner of the Promenade Shopping Center at 755 E. Yosemite Avenue, Suite H (Attachments A). The subject site has a zoning classification of Planned Development (P-D) #48 with a General Plan designation of Neighborhood Commercial (CN). Approval of this Conditional Use Permit does not allow the applicant to convert their restaurant into a bar, lounge, or nightclub. 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 #17-16 (Categorical Exemption) and the modification to Conditional Use Permit #1214 (including the adoption of the modified Resolution at Attachment H), subject to the following additional conditions:

- 16) 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.

PROJECT DESCRIPTION

The Bobcat Diner occupies approximately 2,184 square feet within the Promenade Shopping Center located at the northwest corner at Yosemite Avenue and Paulson Road (Attachment A). The restaurant is located within Building “C,” at the western end of the building (Attachment B). Their floor plan includes dining tables, dining booths, a dining counter, a kitchen, two restrooms, and an electrical room (Attachment C). The applicant is not requesting to make any modifications to the interior or exterior of the building with this application. The restaurant serves a variety of food, with a focus on “camping meals” made from organic ingredients. The restaurant operates daily from 8:00 a.m. to 10:00 p.m.

The applicant is requesting approval to modify Conditional Use Permit #1214 to include the sale of liquor for onsite consumption (in addition to their current approval to sell beer and wine). Approval of this Conditional Use Permit does not allow the applicant to convert their establishment 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 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 the 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 (across the shopping center)	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 Italian Café (Building D) and Wingstop (Building E). Thai Cuisine II (Building E) has approval to sell beer,

wine, and liquor for onsite consumption. 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 early 2017. City staff, including the Police Department, have not received any unusual or excessive number of complaints from restaurants in the shopping center 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 November 2016 and November 2017, the Merced Police Department recorded 96 incidents within the shopping center. 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 14 incidents). The number of incidents reported City-wide for the same time period was 79,000 (Attachment E). Based on the total number of calls within the City, the 96 calls to this area equals 0.12% of the overall crime within the City (Attachment F). 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 Nov. 2016 – Nov. 2017

Incident/Case Type	Number of Incidents
DUI	0
Public Intoxication	2
Disturbance (assaults)	11
MMC*	1
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 onsite consumption. The Bobcat Diner has been selling beer and wine at this location since early 2017, 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, Thai Cuisine II, 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) In 2016, 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. 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 Avenue and Paulson Road 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 liquor for onsite consumption would not interfere with the quiet enjoyment of the surrounding residents. However, to make the project more compatible with the surrounding neighborhoods, Condition #15, from the original CUP, is being retained to limit the hours of alcohol sales until 11:00 p.m., indifferent of the restaurant's hours of operation.

Environmental Clearance

- E) The Planning staff has conducted an environmental review (#17-16) 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 (*Bldg. A was converted into a parking lot)
- C) Floor Plan
- D) Crime Hot Spot Map (Nov. 2016 - Nov. 2017)
- E) Incident Map for the Entire City (Nov. 2016 - Nov. 2017)
- F) Incident Map within the Promenade Shopping Center
- G) Categorical Exemption
- H) Modified Planning Commission Resolution #3074 for CUP #1214



ATTACHMENT A

PROFESSIONAL SEAL:
 State of California, City of Merced
 License No. 50423
 Exp. 12/31/2018

REGISTERED:
 GOLDEN VALLEY
 ENGINEERING & SURVEYING
 11250 Golden Valley Road
 Oakland, CA 94605
 P.O. Box 348
 Merced, CA 95372
 Ph: (209) 722-3300
 Fax: (209) 722-3384

No. Date Description

1.00 04/20/18 Initial Site Plan

2.00 04/20/18 Final Site Plan

3.00 04/20/18 Final Site Plan

4.00 04/20/18 Final Site Plan

5.00 04/20/18 Final Site Plan

6.00 04/20/18 Final Site Plan

7.00 04/20/18 Final Site Plan

8.00 04/20/18 Final Site Plan

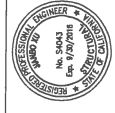
9.00 04/20/18 Final Site Plan

10.00 04/20/18 Final Site Plan

CALIFORNIA

CITY OF MERCED

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



PROJECT OWNER:
 Limited Site Plan

DESIGNED BY:
 Gregory J. Gabel
 11250 Golden Valley Rd.
 Oakland, CA 94605
 Ph: (925) 325-1515
 Fax: (925) 325-1515
 Email: ggabel@goldenvalley.com

PROJECT DATE:
 APRIL 20, 2018

SCALE:
 AS SHOWN

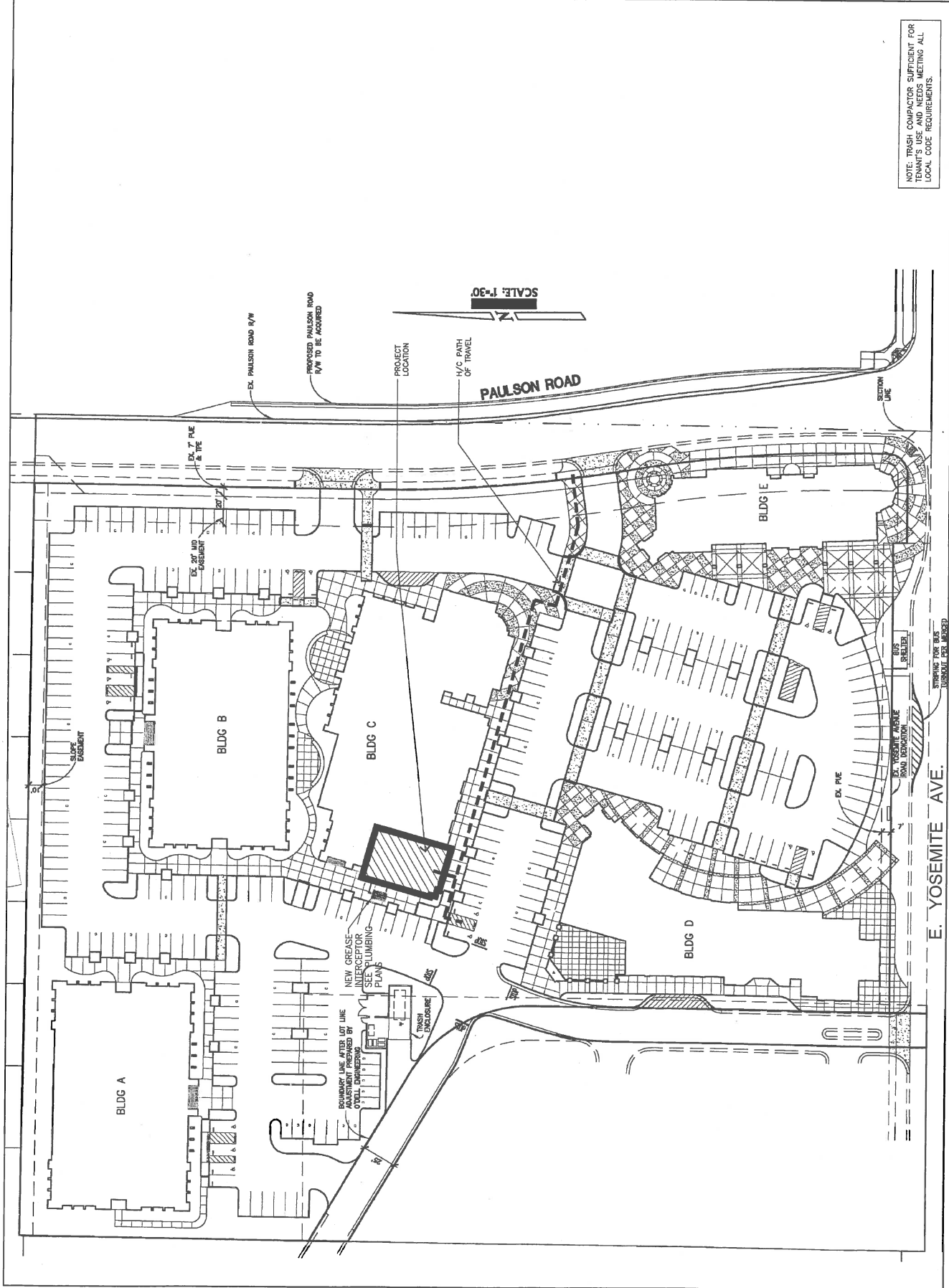
DRAWN BY:
 PRL

CHECKED BY:
 PRL

DATE:
 04/20/18

SHEET NUMBER:
 C1.0

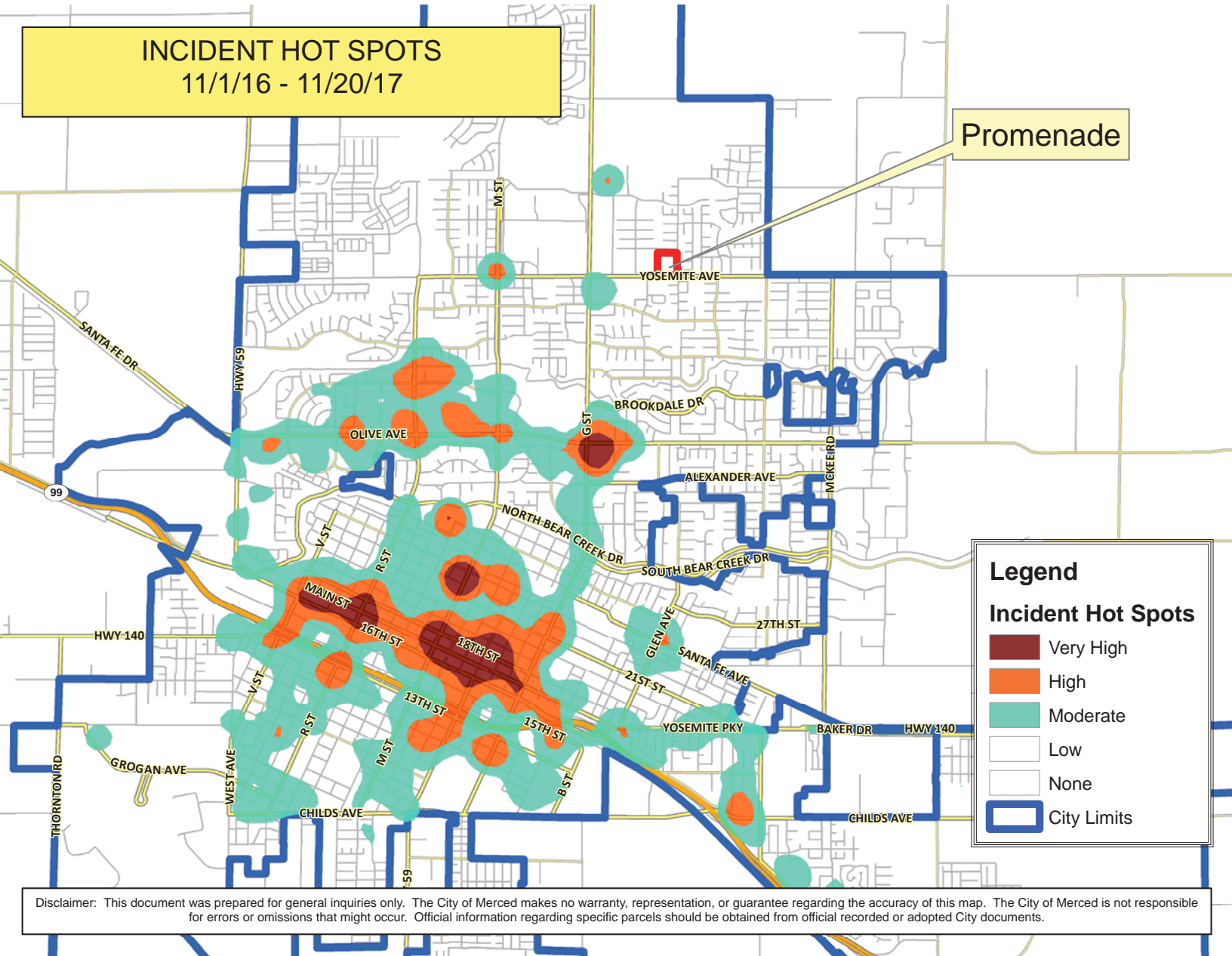
NOTE: TRASH COMPACTOR SUFFICIENT FOR TENANT'S USE AND NEEDS MEETING ALL LOCAL CODE REQUIREMENTS.



ATTACHMENT B

INCIDENT HOT SPOTS
11/1/16 - 11/20/17

Promenade



Legend

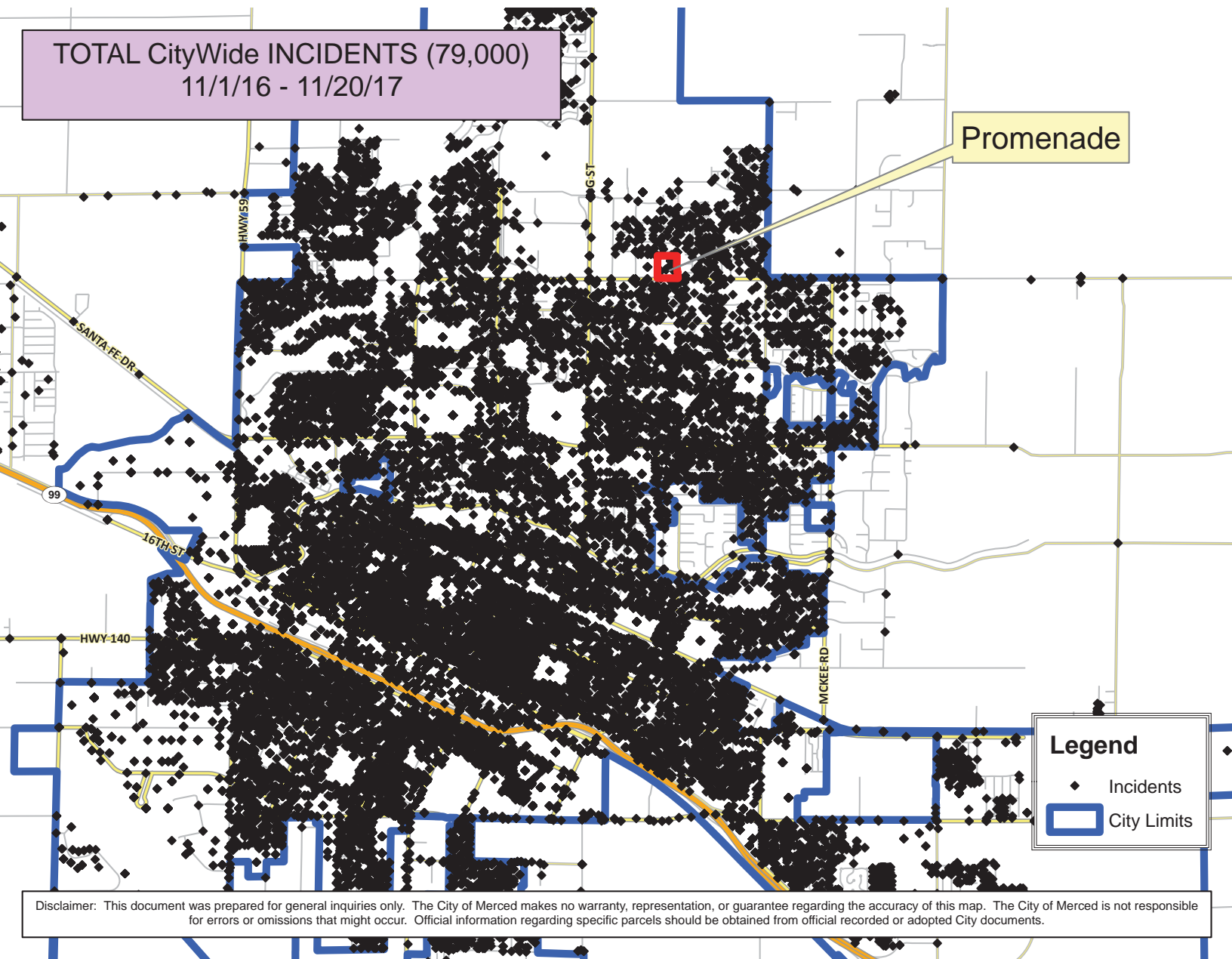
Incident Hot Spots

- Very High
- High
- Moderate
- Low
- None
- City Limits

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.

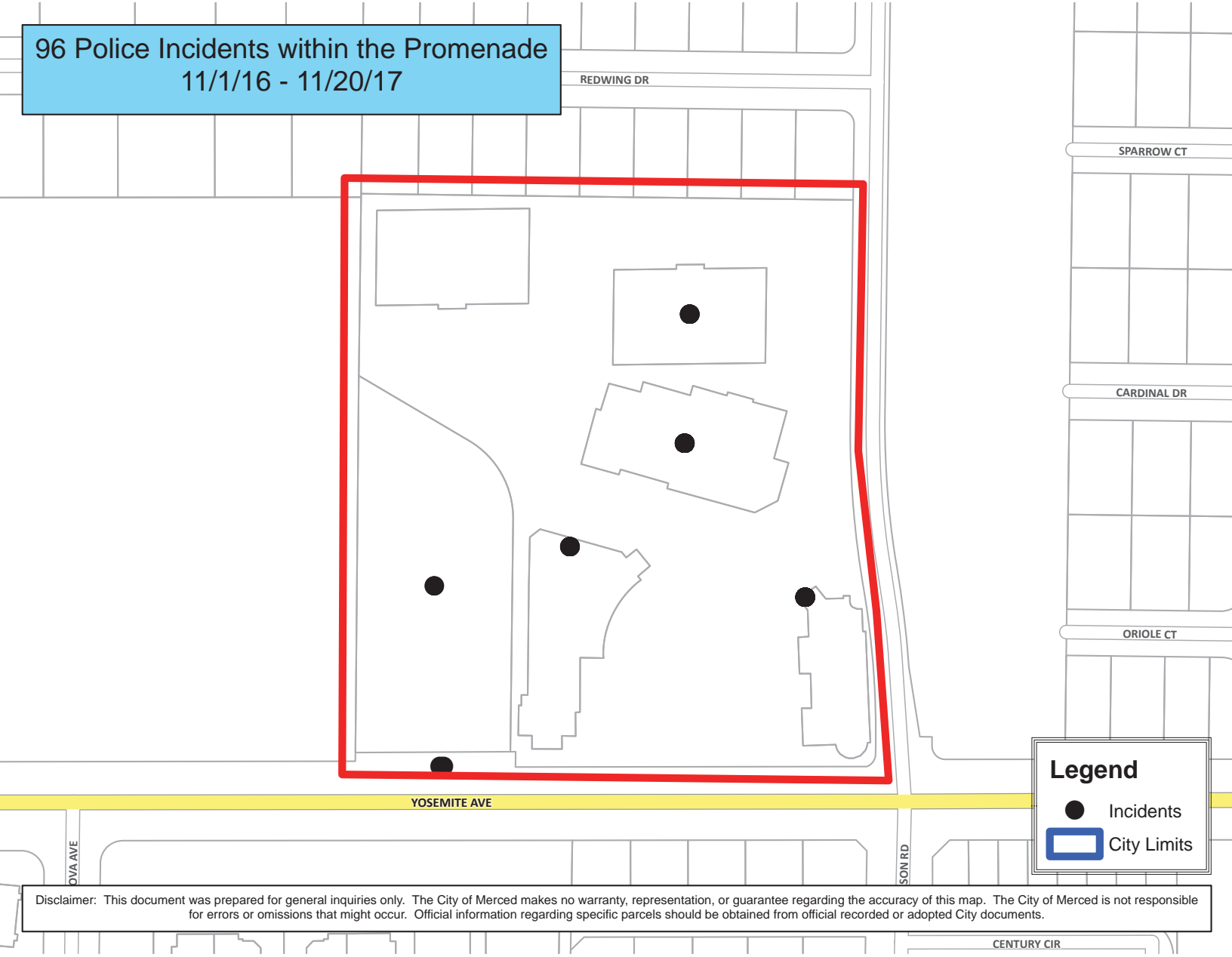
TOTAL CityWide INCIDENTS (79,000)
11/1/16 - 11/20/17

Promenade



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96 Police Incidents within the Promenade
11/1/16 - 11/20/17



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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 #1214 (Environmental Review #17-16)

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));
- 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 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:** 11-13-2017 **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**

Amended by PC on
12/6/2017. See
Pg. 3.

Resolution #3074

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 Colby, seconded by Commissioner Smoot, and carried by the following vote:

AYES: Commissioners Baker, Colby, Dylina, Padilla, Smith, Smoot, and Chairperson McLeod

NOES: None

ABSENT: None

ABSTAIN: None

ATTACHMENT H

PLANNING COMMISSION RESOLUTION # 3074

Page 2

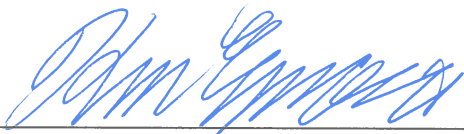
September 21, 2016

Adopted this 21st day of September 2016



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

PLANNING COMMISSION RESOLUTION #3074

Page 3 of 3

September 21, 2016/December 6, 2017

December 6, 2017: At their regularly scheduled meeting of December 6, 2017, the Merced City Planning Commission considered Modification to Conditional Use Permit#1214 and Environmental Review #17-16.

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #17-17; and,

NOW THEREFORE, 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 #17-16, and approve a Modification of Conditional Use Permit #1214 with the addition of Condition #16 as follows:

16. 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.

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)

Conditions of Approval
Planning Commission Resolution #3074
Conditional Use Permit #1214

Amended by PC on 12/6/2017.

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.
16. 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.

Condition #16 added on 12/6/2017

n:shared:planning:PC Resolutions: Mod to CUP #1214 Exhibit A