

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #18-12

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: May 23, 2018

PREPARED BY: Francisco Mendoza-Gonzalez,
Planner

SUBJECT: **Conditional Use Permit #1225** initiated by Juan Mondragon, on behalf of William Lee Liu and Tai Ho Liu, Trustees, property owner. This application involves a request to allow the sale of beer and wine for on-site consumption within a restaurant (Carnitas Michoacan) located at 1540 Yosemite Parkway. The subject site is generally located at the southeast corner at Yosemite Parkway and Shirley Street, within a Neighborhood Commercial (C-N) Zone. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #18-46 (Categorical Exemption)
- 2) Conditional Use Permit #1225

SUMMARY

Carnitas Michoacan is requesting approval to serve beer and wine for on-site consumption, secondary to the primary restaurant. Carnitas Michoacan has been part of the Century Plaza since 2013 and occupies the tenant space located at 1540 Yosemite Parkway (Attachment A). Restaurants are a permitted use within a Neighborhood Commercial (C-N) Zone, but alcohol sales are a conditional use. Approval of this Conditional Use Permit does not allow the applicant to convert their restaurant into a bar, lounge, or night club, but allows them to serve beer and wine to their restaurant patrons with meals. 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 #18-46 (Categorical Exemption) and Conditional Use Permit #1225 (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) 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) The restaurant shall meet all applicable Merced County Health Department requirements.
- *8) The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
- 9) 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.
- 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.
- 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 outlined 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

Carnitas Michoacan occupies an 1,800-square-foot tenant space within the Century Plaza, located near the southeast corner of Yosemite Parkway and Shirley Street. The restaurant is located within the western portion of the strip mall. Their floor plan includes 12 tables, 50 chairs, a kitchen, a bathroom, and a cooler box. The restaurant serves a variety of food, with a focus on Mexican cuisine. The restaurant is open daily from 11:00 a.m. to 8:00 p.m.

The applicant is requesting conditional use permit approval to sell beer and wine for on-site consumption with meals. Approval of this Conditional Use Permit does not allow the applicant to convert their restaurant into a bar, lounge, or nightclub (Condition #11). 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 proposal 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	Offices (across Yosemite Parkway)	Commercial Office (C-O)	Commercial Office (CO)
South	Single-Family Homes (across the adjacent alley)	Low Density Residential (R-1-6)	Low Density Residential (R-1-6)
East	Nikkos Place (Restaurant)	Neighborhood Commercial (C-N)	Neighborhood Commercial (CN)
West	Cell King (Retail)	Neighborhood Commercial (C-N)	Neighborhood Commercial (CN)

BACKGROUND

In 1981, the Planning Commission approved the sale of beer and wine for the restaurant located at the western corner of the Century Plaza at 1500 Yosemite Parkway. This site is currently occupied by Hao’s Kitchen and they have elected not to serve beer and wine at this time. Besides this site, there are currently no other sites within the Century Plaza with ABC/CUP approval to sell beer, wine, or liquor for either onsite or offsite consumption. Carnitas Michoacan would be the second tenant to have ABC /CUP approval to sell alcohol within the Century Plaza. Carnitas Michoacan has been a part of the Century Plaza since 2013.

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 Neighborhood Commercial (C-N) with approval of a conditional use permit.

Merced Police Department

- B) Between 5/1/2017 and 4/30/2018, the Merced Police Department recorded 330 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 51 incidents for the time period studied). As shown on the attached Incident Map (Attachment G), the majority of those incidents occurred away from the Century Plaza 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 77,025 (Attachment F). Based on the total number of calls within the City, the 330 calls to this area equals 0.4% of the overall crime within the City. As shown on the attached Crime Hot Spot Map for City of Merced (Attachment E), 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 5/1/2017-4/30/2018

Incident/Case Type	Number of Incidents
DUI	3
Public Intoxication	5
Disturbance (assaults)	8
MMC*	31
Narcotics violations	4

*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 Carnitas Michoacan or their customers. 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) Parking for restaurants is based on seating (1 parking space per 2.5 seats). The applicant is not proposing to increase the number of seats within their restaurant so there will be no impact on parking with their request to serve beer and wine.

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.

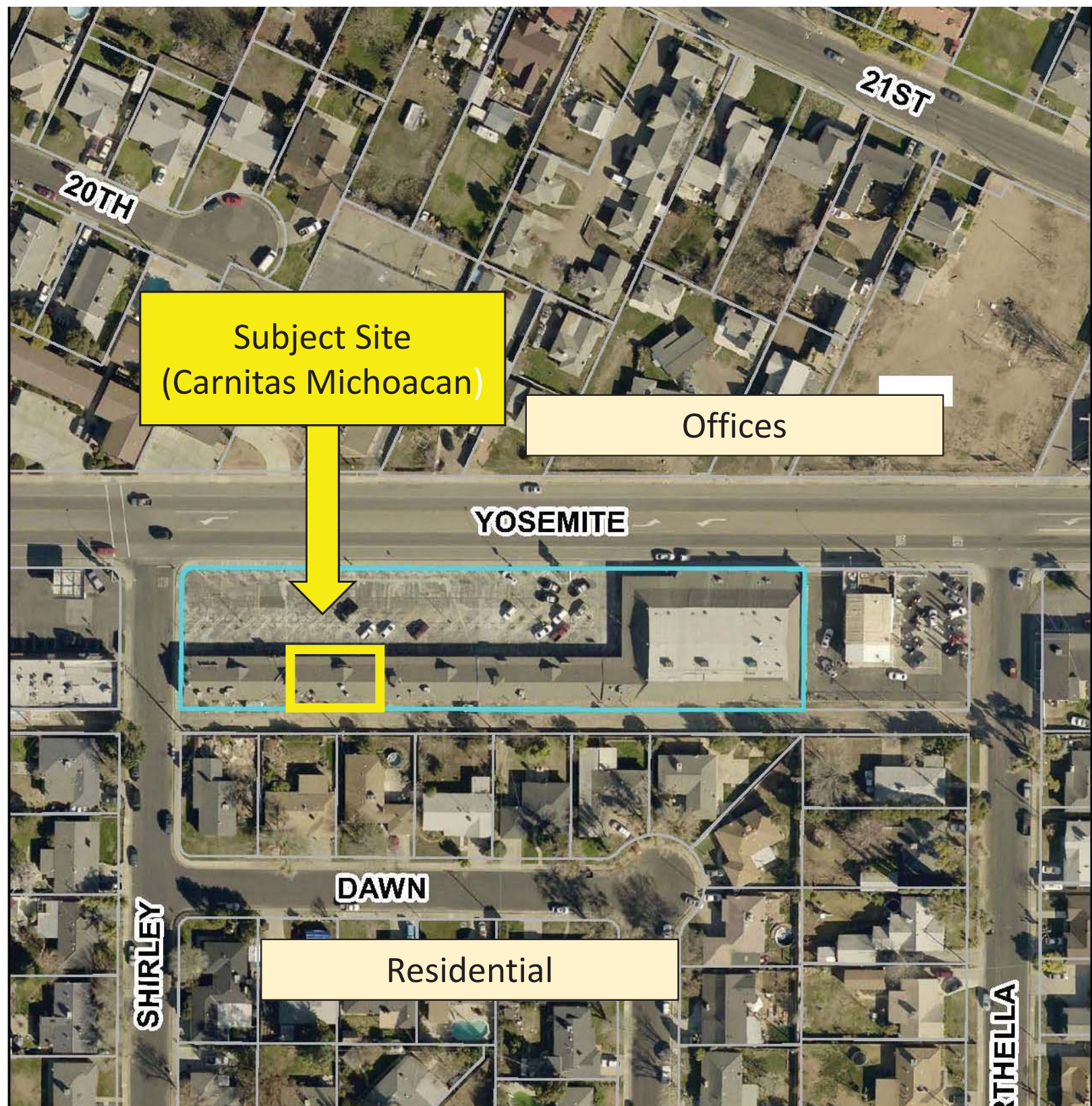
In this case, the residential uses to the north are located about 300 feet away from the restaurant. In between the restaurant and these homes, there is a 4-lane major arterial road (Yosemite Parkway) and a row of offices. The residential uses to the south are located approximately 20 feet behind the restaurant. However, as shown on the Location Map at Attachment A, these homes and the Century Plaza are oriented in the opposite direction from one another, and are separated by an alley. There is no direct access between the Century Plaza and the homes to the south. Due to the distance and barriers between the restaurant and the surrounding homes, 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. In addition, the restaurant is not expecting to operate later than 8:00 p.m. so there will be minimal noise impact from the restaurant to the surrounding homes in the evenings. However, to ensure that the restaurant will not interfere with the quiet enjoyment of the surrounding neighborhood, 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).

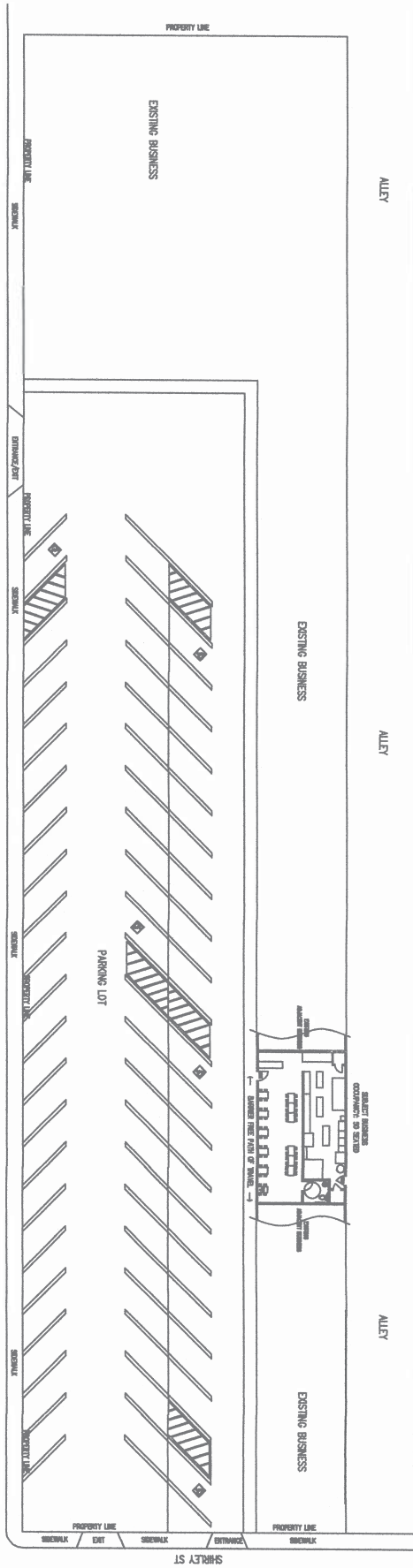
Environmental Clearance

- E) Planning staff has conducted an environmental review (#18-46) 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) Photographs of Exterior Elevations
- E) Crime Hot Spot Map for the Entire City
- F) Incident Map for the Entire City
- G) Incident Map Near Subject Site (500-foot Radius)
- H) Categorical Exemption
- I) Draft Planning Commission Resolution





SITE PLAN
SCALE 1:200

YOSEMITE PKWY

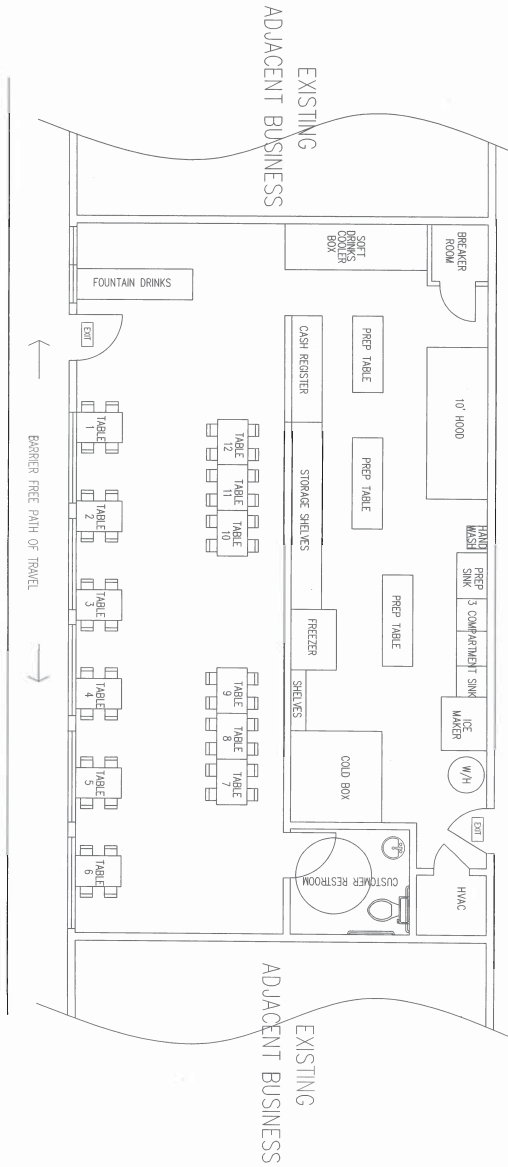
ALL DIMENSIONS TO BE FINISHED FOR SCHEDULE AT JOB SITE.
Existing depths include the requirements of section 10020.1(b)(2) of the S.C. Code.
It is the contractor's responsibility to check and verify all dimensions and conditions of the site prior to the start of construction. ANY AND ALL DISCREPANCIES FOUND TO BE BROUGHT TO THE ARCHITECT'S / ENGINEER'S ATTENTION IMMEDIATELY. THE ARCHITECT / ENGINEER'S ATTENTION OF THE EXISTING CONDITIONS TO FIELD CONDITIONS. IT IS FURTHER NOTED THAT THE APPROVED RECORD SET OF DIMENSIONS BY THE BUILDING DEPARTMENT IS THE CONTRACTOR'S FINAL WORKING PLANS.

CARNITAS MICHOCACAN RESTAURANT
1540 YOSEMITE PKWY.
MERCED, CA 95340

PLANS PREPARED BY:
RAYMOND RODRIGUEZ
2024 SOLA CT
ATWATER CA 95301
CELL (209) 769-0555
RAY'S DRAFTING AND DESIGN.

SET NUMBER

OCCUPANCY: 50 SEATED



FLOOR PLAN
SCALE 1/4"=1'-0"

JOB OADR REQUIRED TO BE AVAILABLE FOR SCHEDULE AT JOB SITE

Building design meets the requirements of Section 10301(1) Title 14, CAC

Sheet

IT IS THE CONTRACTOR'S RESPONSIBILITY TO CHECK AND VERIFY ALL DIMENSIONS & ANY OTHER DISCREPANCIES FOR ACCURACY. ANY DISCREPANCIES FOUND TO BE BROUGHT TO ARCHITECT'S ATTENTION. ANY STRUCTURAL CHANGES MUST BE BROUGHT TO THE ARCHITECT'S ATTENTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES.

DATE: 08/10/2017	SHEET NO.: 2
------------------	--------------

CARNITAS MICHOCAN RESTAURANT
1540 YOSEMITE PKWY.
MERCED, CA 95340

PLANS PREPARED BY:
RAYMOND RODRIGUEZ
2024 SOLA CT
ATWATER CA 95301
CELL (209) 769-0555
RAYS DRAFTING AND DESIGN.

SET NUMBER

North Elevation
(fronting Yosemite Parkway)

Carnitas
Michoacana
MEXICAN FOOD
(209) 383 2605

ATTACHMENT D

1540

OPEN
CARNITAS
EVERYDAY

M
RISCOS

BARBACOA DE BORREGO
SAT. & SUND.

N.
BURR

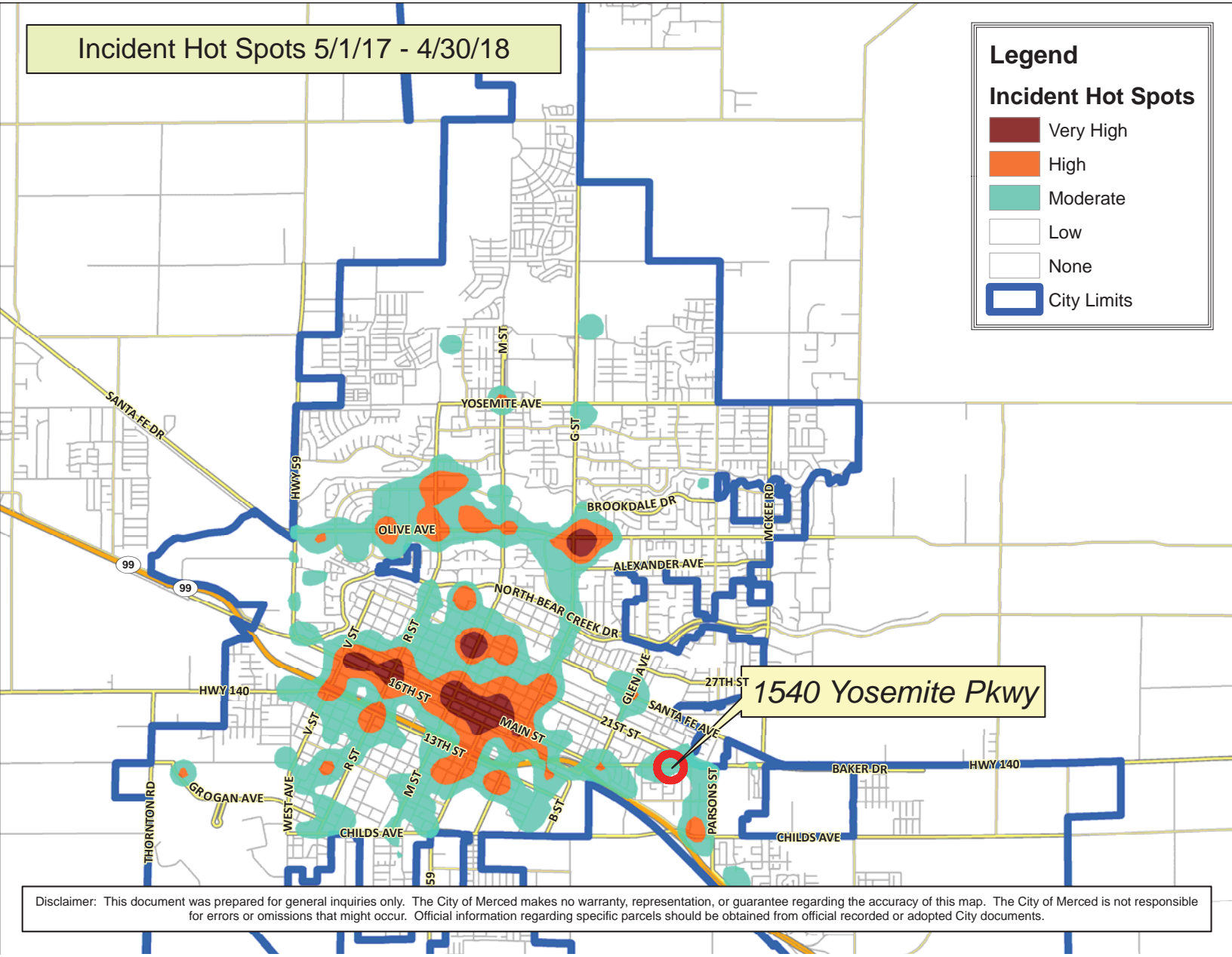
L.
C.M
ZYARD

Incident Hot Spots 5/1/17 - 4/30/18

Legend

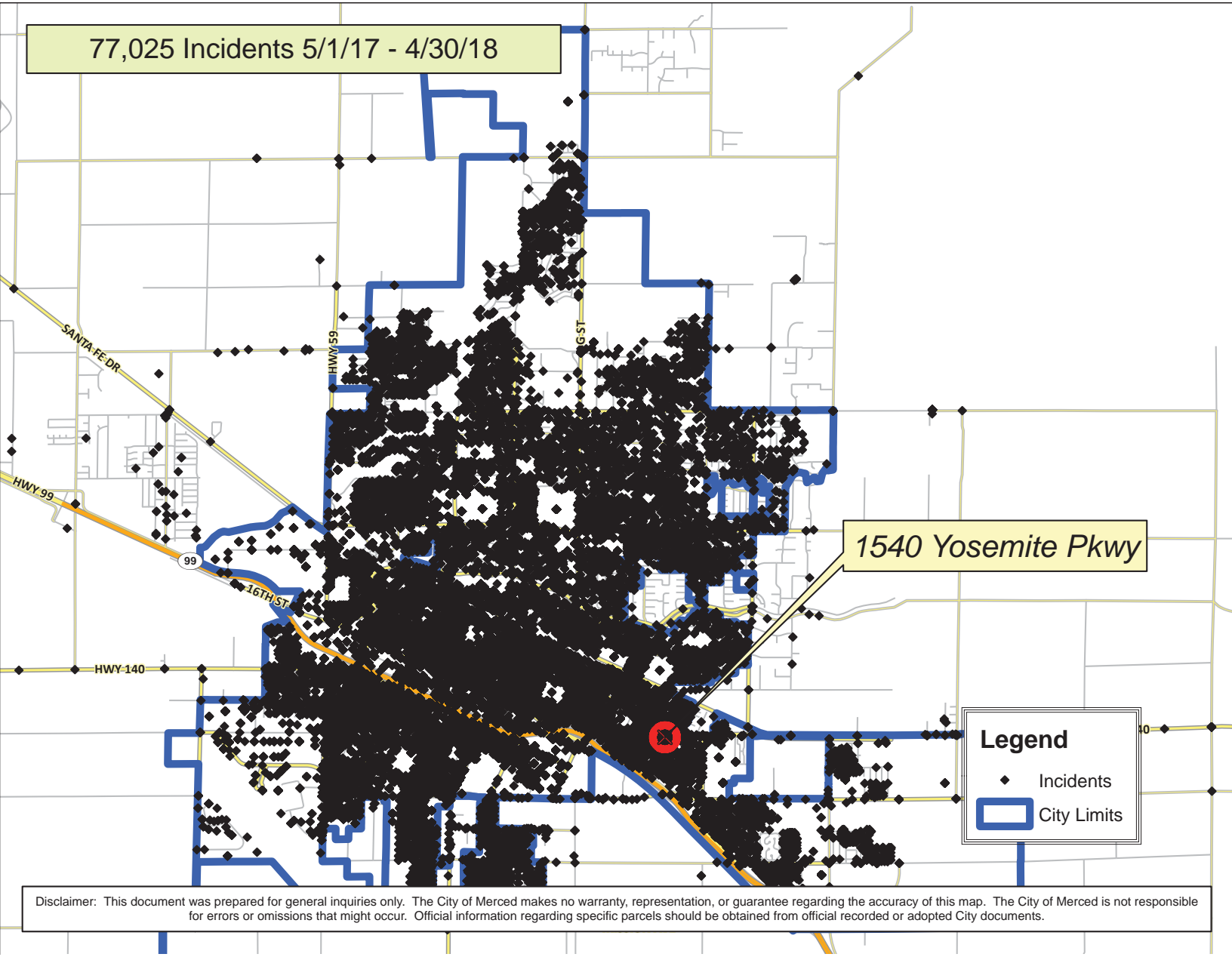
Incident Hot Spots

- 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.

77,025 Incidents 5/1/17 - 4/30/18



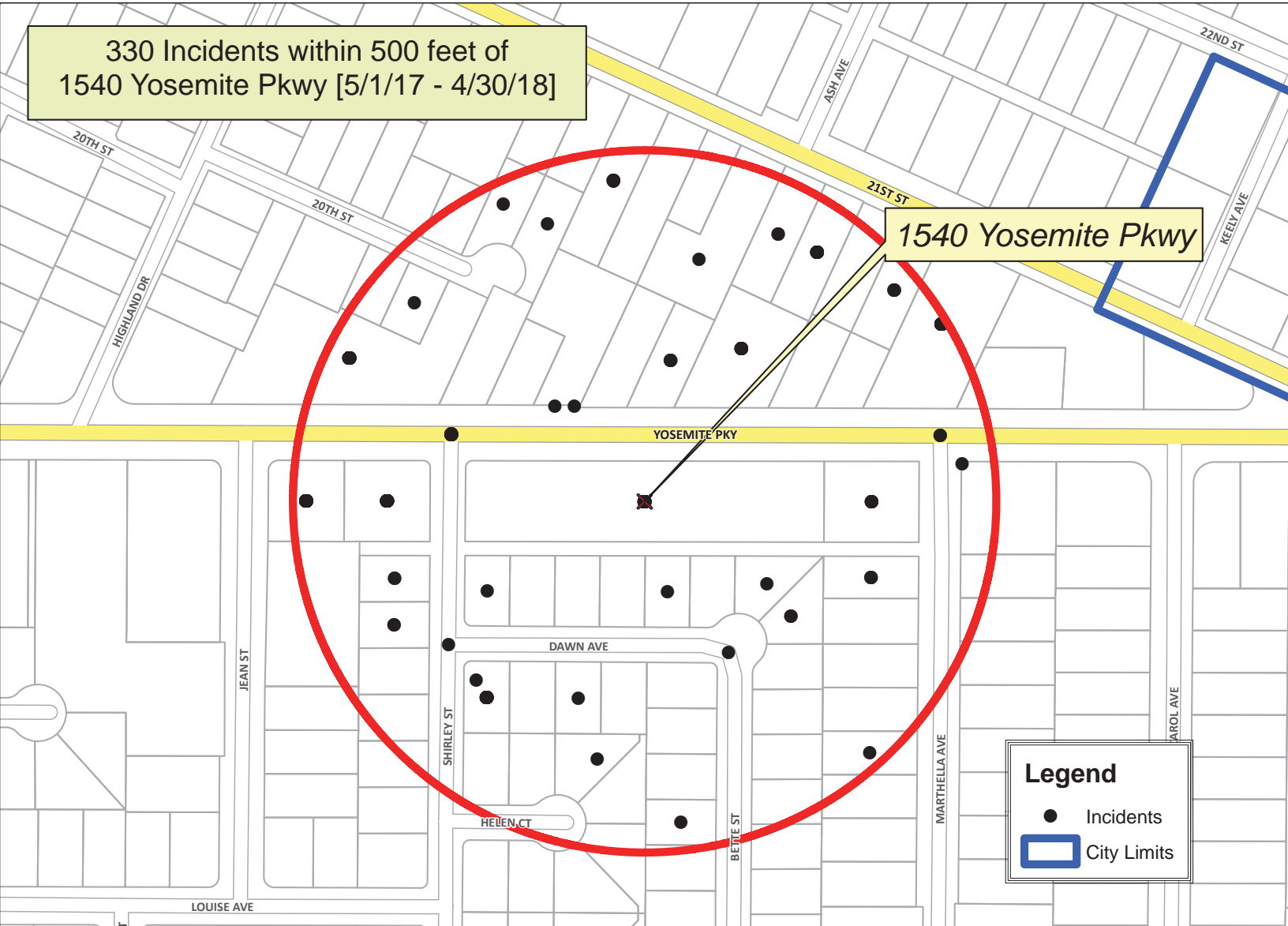
1540 Yosemite Pkwy

Legend

- ◆ Incidents
- ▭ 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.

330 Incidents within 500 feet of
1540 Yosemite Pkwy [5/1/17 - 4/30/18]



1540 Yosemite Pkwy

Legend

- Incidents
- ▭ 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.

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 #1225 (Environmental Review #18-46)

Project Applicant: Juan Mondragon

Project Location (Specific): 1540 Yosemite Parkway

APN: 035-082-001

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: Juan Mondragon

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:** 04-26-2018 **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 #3094

WHEREAS, the Merced City Planning Commission at its regular meeting of May 23, 2018, held a public hearing and considered **Conditional Use Permit #1225**, initiated by Juan Mondragon, on behalf of William Lee Liu and Tai Ho Liu, Trustees, property owner. This application involves a request to allow the sale of beer and wine for on-site consumption within a restaurant (Carnitas Michoacan) located at 1540 Yosemite Parkway. The subject site is generally located at the southeast corner at Yosemite Parkway and Shirley Street, within a Neighborhood Commercial (C-N) Zone; also known as Assessor's Parcel Number 035-082-001; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #18-12; 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 #18-46, and approve Conditional Use Permit #1225, 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 #3094

Page 2

May 23, 2018

Adopted this 23rd day of May 2018

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions: CUP#1225 (Carnitas Michoacan)

Conditions of Approval
Planning Commission Resolution # 3094
Conditional Use Permit #1225

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 #18-12.
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. The restaurant shall meet all applicable Merced County Health Department requirements.
8. The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
9. 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.
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.
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 outlined 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 #1225 Exhibit A