

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #19-23

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: October 9, 2019

PREPARED BY: Francisco Mendoza-Gonzalez,
Associate Planner

SUBJECT: **Conditional Use Permit #1233**, initiated by Gelt Holdings, Inc., on behalf of Shemoil Moradzadeh, property owner. This application involves a request to allow for the delivery and sale of beer and wine for on-site consumption within a restaurant (Pizza Hut) located at 580 W. Olive Avenue. The subject site is generally located on the south side of Olive Avenue, approximately 200 feet east of M Street, within Planned Development (P-D) #4, with a Neighborhood Commercial (CN) General Plan designation. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #19-22 (Categorical Exemption)
- 2) Conditional Use Permit #1233

SUMMARY

Pizza Hut is requesting conditional use permit approval to deliver and serve beer and wine for on-site consumption as an ancillary use to their restaurant. Restaurants are a principally permitted use within a Neighborhood Commercial (C-N) Zone, but alcohol sales are a conditional use in this zone. Pizza Hut is in the process of relocating from their existing site at 575 W. Olive Avenue to 580 W. Olive Avenue (Attachment A). 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 #19-22 (Categorical Exemption) and Conditional Use Permit #1233 (including the adoption of Resolution at Attachment H), subject to the following additional conditions:

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment B.
- *2) All conditions contained in Resolution #1249 (“Standard Conditional Use Permit Conditions”) shall apply.
- *3) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

- *4) 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.
- *5) 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.
- 6) Alcoholic beverages service in the outdoor patio area is being approved with this permit.
- 7) Signs shall be posted on the fence stating "No Alcohol Allowed Outside This Area." The signs shall be a maximum of 1 square foot and shall be posted on each side of the outdoor patio area in an area visible to customers.
- 8) No temporary signs shall be attached to the metal fence. All temporary signs shall be approved and a "Temporary Sign Permit" shall be obtained prior to installation.
- 9) An employee shall monitor the outdoor patio area at all times when alcohol is being served.
- 10) Exterior doors shall not be propped open during business operations. If sufficient complaints are received regarding noise from music or other activities, the restaurant shall provide a means for suppressing the noise coming from the building. The means and method used to suppress noise shall be approved by the Building Department prior to installation.
- 11) Any music played over outdoor speakers in the patio area shall be kept to a minimum so as not to travel outside the immediate area around the restaurant.
- 12) Sufficient lighting shall be provided throughout the outdoor patio area. A lighting plan shall be included with the building permit application for the patio.

- 13) Receptacles for the disposal of smoldering remnants and discarded debris associated with smoking tobacco products (such as ashes and cigarette butts) shall be made available in the patio. The receptacles shall be included in the plans for the patio.
- *14) Any outdoor heating units shall need to be listed and approved by the Fire Department.
- *15) The restaurant shall meet all applicable Merced County Health Department requirements.
- *16) The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
- *17) This approval is for alcohol sales as an ancillary use to the primary restaurant only.
- *18) Alcohol deliveries shall comply with all relevant regulations required by the Department of Alcoholic Beverage Control, and the Merced County Environmental Health Department.
- 19) Any 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).
- 20) 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.
- 21) The applicant shall work with the City's Refuse Department to determine if a recycling container would be required and if additional bins or an increase in frequency of refuse service is required to accommodate this use.

(*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

Pizza Hut is in the process of relocating from 575 W. Olive Avenue (on the north side of Olive Avenue) to 580 W. Olive Avenue (on the south side). As shown on Attachments B and C, the applicant will be remodeling the interior and exterior of their new building. The proposed floor plan consists of indoor/outdoor seating, a kitchen, and restrooms. The restaurant serves pizzas, pastas, salads, and wings. On Sundays through Thursdays, the restaurant will operate from 9:30 a.m. to 11:00 p.m.; and on Fridays through Saturdays, the restaurant will operate from 9:30 a.m. to 12:00 a.m.

The applicant is requesting conditional use permit approval to deliver and 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, 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 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	Burger King (across W. Olive Avenue)	Planned Development (P-D) #5	Thoroughfare Commercial (CT)
South	Professional Office Suites	Planned Development (P-D) #4	Commercial Office (CO)
East	Deli Delicious/AT&T Store/ Armed Forces Recruiters	Planned Development (P-D) #4	Commercial Office (CO)
West	Stanton Optical	Planned Development (P-D) #4	Neighborhood Commercial (CN)

BACKGROUND

Pizza Hut currently has approval to deliver and serve beer and wine at their existing location at 575 W. Olive Avenue. The Police Department confirmed that Pizza Hut has not generated any significant problems serving beer and wine at their current location. The applicant has filed for a Type 41 Alcoholic Beverage Control License (ABC), which allows restaurants to serve beer and wine for onsite consumption. Recent changes in State laws have expanded the privileges of Type 41 ABC Licenses to allow for the delivery of alcoholic beverages. Existing restaurants with Type 41 Licenses were automatically granted the right to deliver alcohol in their original containers along with a food order. Several businesses throughout the community are currently delivering alcohol with food (such as Pizza Guys at 2800 G Street). The City may prevent restaurants from delivering alcohol if the restaurant is submitting a new application to serve alcohol in a zone that requires a discretionary land use permit. In Merced, the commercial zones that require land use permits for this activity are the Neighborhood Commercial (C-N) Zone and the Shopping Center Commercial (C-SC) Zone. The Commercial Zones where land use permits are not required (and thus alcohol service and delivery is principally permitted) include the Central Commercial (C-C) Zone, Thoroughfare Commercial (C-T) Zone, General Commercial (C-G) Zone, and the Business Park (B-P) Zone. Most zones throughout the community do not require discretionary land use permits and restaurants within these zones are allowed to deliver and serve alcohol onsite outright, in compliance with State laws.

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) #4 with approval of a Conditional Use Permit.

Merced Police Department

- B) Between 8/1/2018 and 8/26/2019, the Merced Police Department recorded 89 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). The attached Incident Map (Attachment E), shows how the incidents were distributed throughout the neighborhood. The number of incidents reported City-wide for the same time period was approximately 83,000. Based on the total number of calls within the City, the 89 calls to this area equals 0.10 % of the overall crime within the City. As shown on the attached Crime Hot Spot Map for City of Merced (Attachment D), crime rates in this area are considered 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 8/1/2018 - 8/26/2019

Incident/Case Type	Number of Incidents
DUI	0
Public Intoxication	0
Disturbance (assaults)	28
MMC*	3
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.

Proximity to Residential Uses and Church

- C) 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 south of the subject site (approximately 200 feet away from the relocated Pizza Hut). There are some buffer elements/space (e.g. block wall, parking spaces, and driving aisles) along the north side of the residential parcel that help reduce impacts related to 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 nearby residents.

Alcoholic Beverage Deliveries

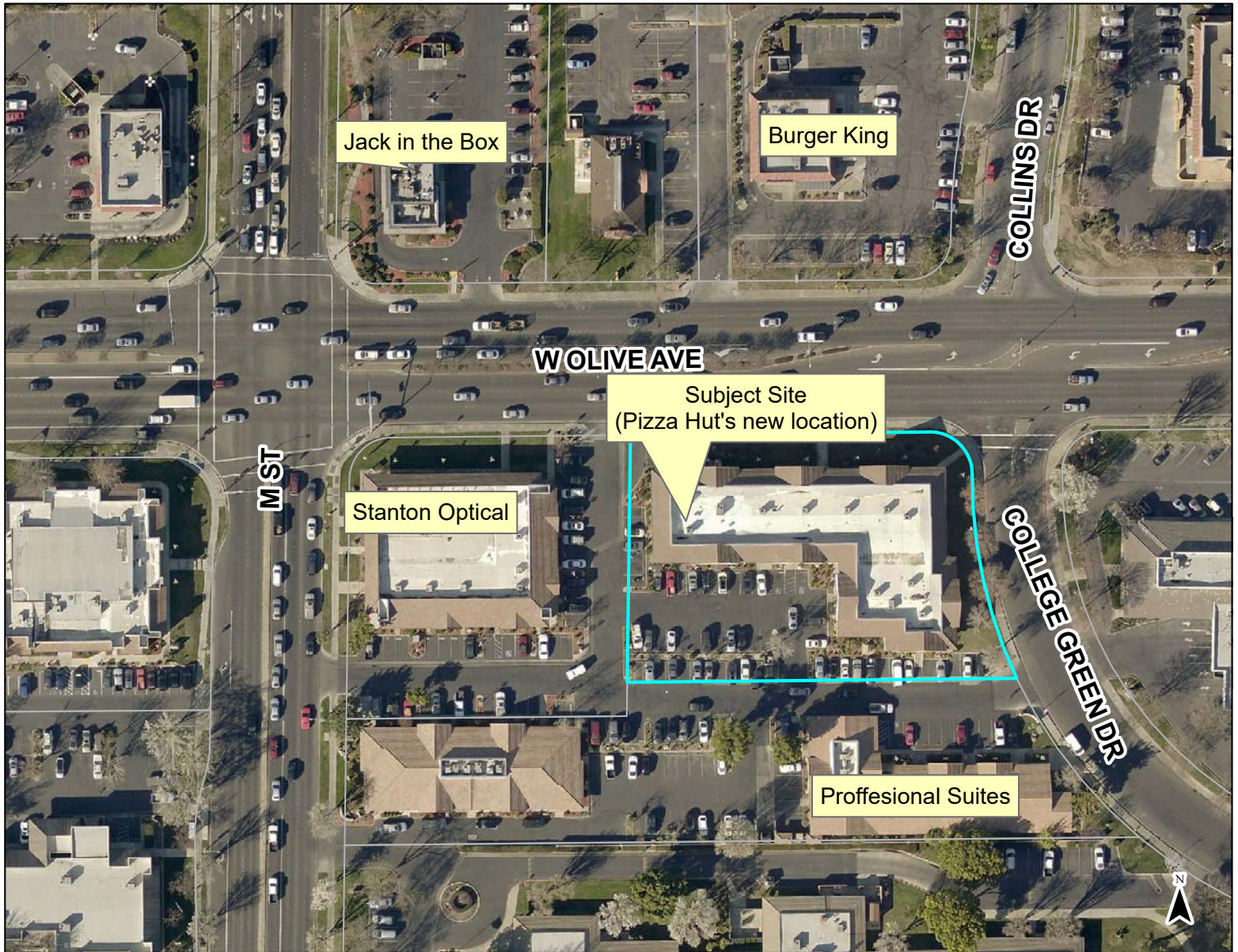
- D) The State Department of Alcoholic Beverage Control recently expanded the privileges of the Type 41 ABC License to allow restaurants to deliver alcohol in their original containers with a food order. As shown at Attachment F, Pizza Hut created a set of procedures that regulates the delivery of their alcohol. Some of the regulations include requiring delivery drivers to be at least 18 years, requiring identification card screening, and requiring an affidavit for the transaction. Attachment F shows Pizza Hut's alcohol menu which includes buying beer in 2-packs or 6-packs.

Environmental Clearance

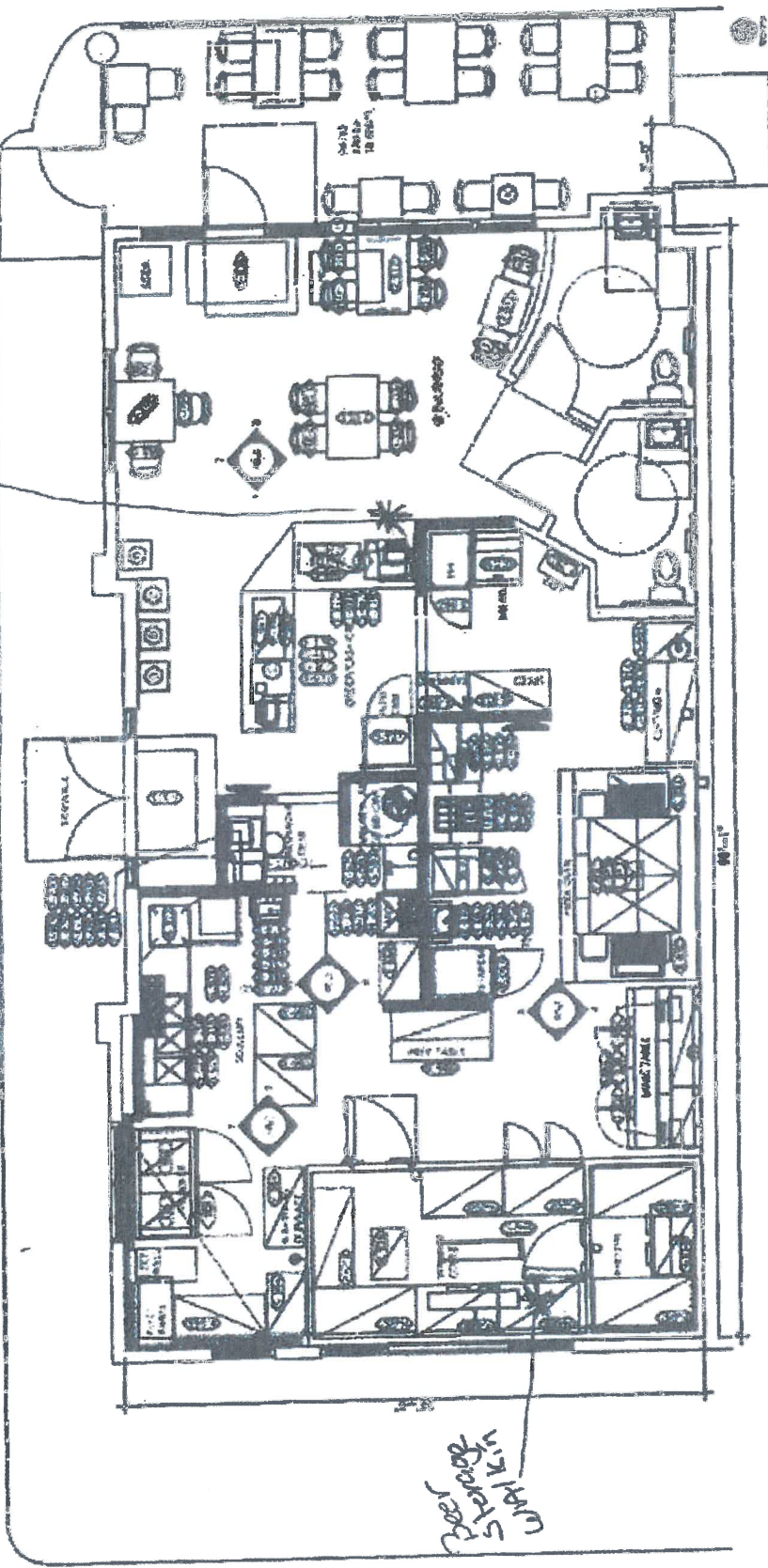
- E) Planning staff has conducted an environmental review (#19-22) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment G).

Attachments:

- A) Location Map
- B) Floor Plan
- C) Elevations
- D) Crime Hot Spot Map/ Incident Map for the Entire City
- E) Incident Map Near Subject Site (500-foot Radius)
- F) Pizza Hut Alcohol Menu and Alcohol Delivery Procedures
- G) Categorical Exemption
- H) Draft Planning Commission Resolution



Beer cooler, service counter



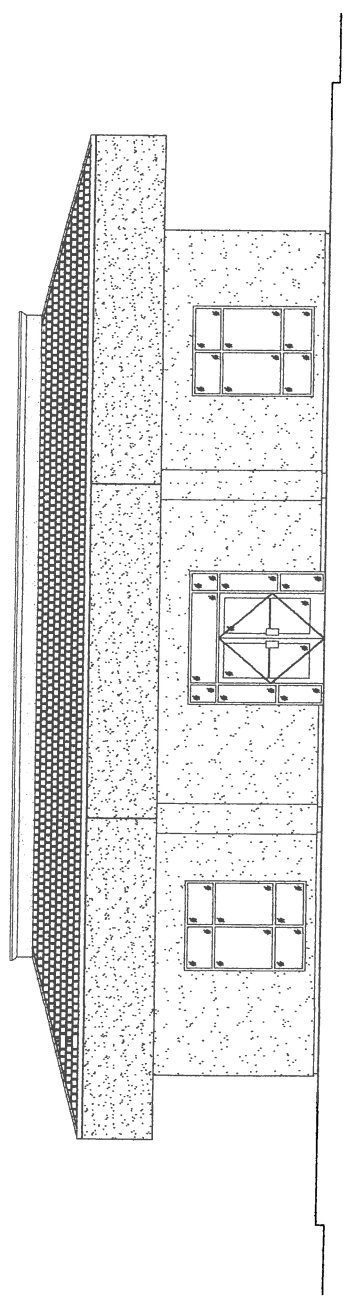
EQUIPMENT PLAN



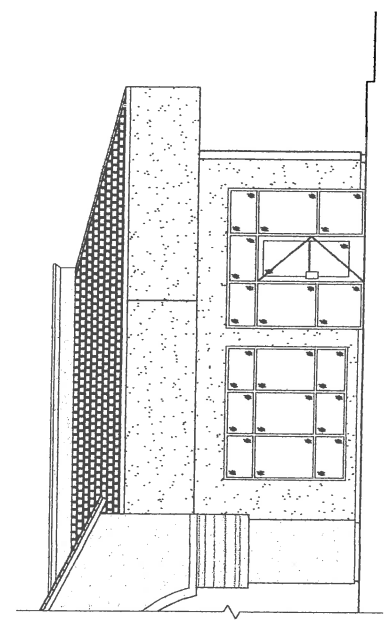
HMR PROJECT#: 18044
 CONTRACT DATE: _____
 BUILDING TYPE: _____
 PLAN VERSION: _____
 SITE NUMBER: _____
 STORE NUMBER: _____
 REGO LITE



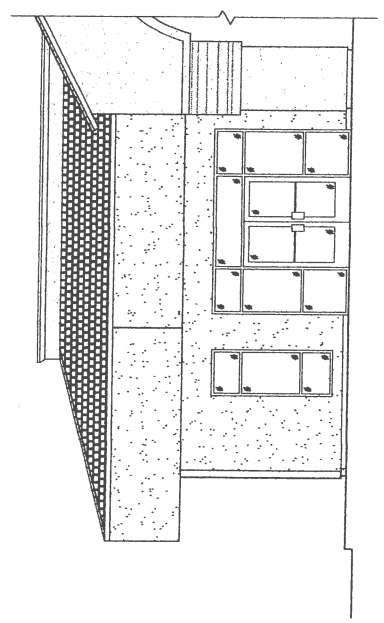
EXTERIOR ELEVATIONS
A4.0
 001.03.01
 R01.01.01



WEST EXTERIOR ELEVATION (FACING DRIVEWAY) 1/4"=1'-0" A

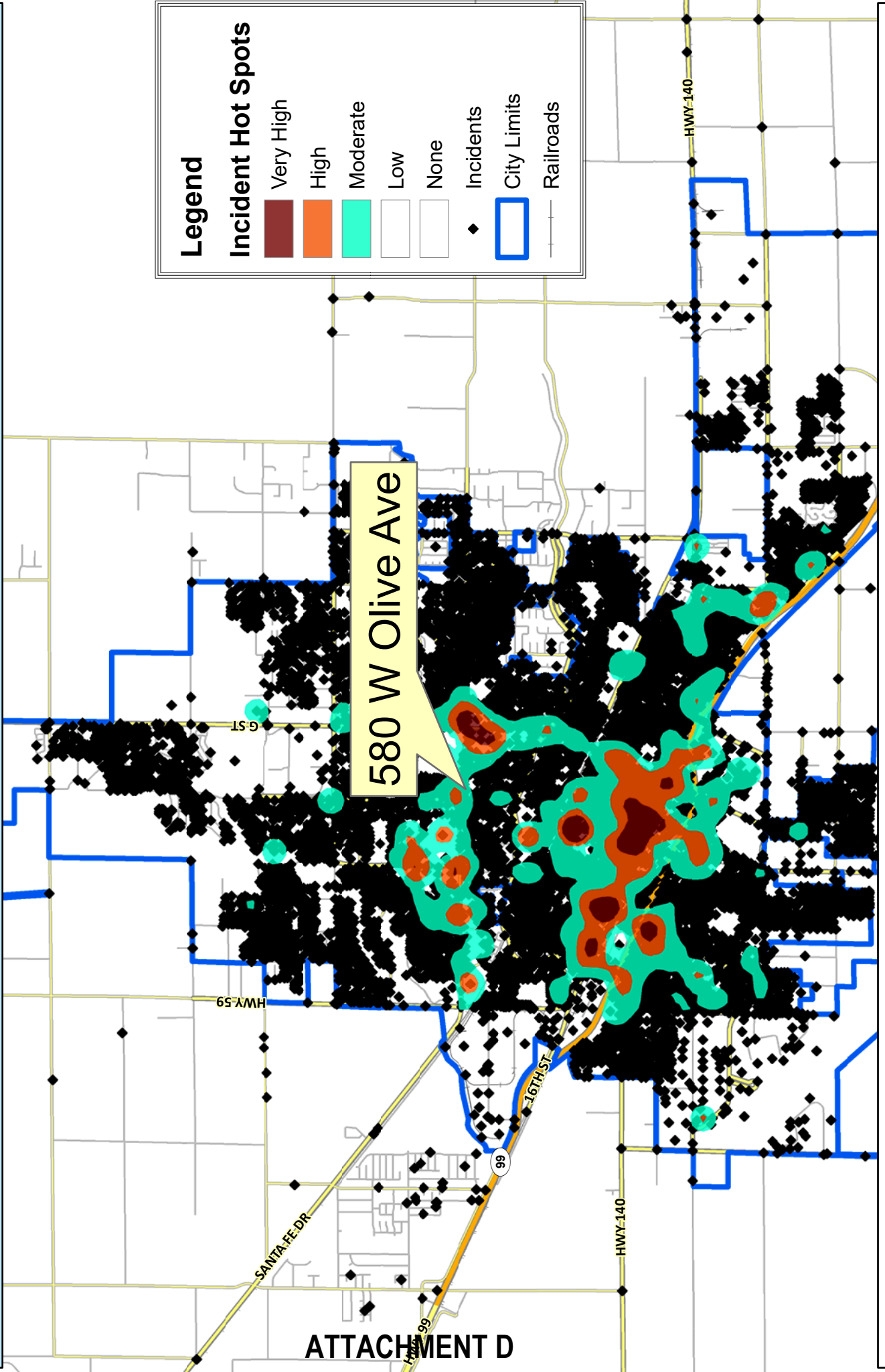


NORTH EXTERIOR ELEVATION (FACING WEST OLIVE AVE.) 1/4"=1'-0" B



SOUTH EXTERIOR ELEVATION (FACING PARKING LOT IN REAR) 1/4"=1'-0" C

INCIDENT Hot Spots CITYWIDE 83,000+ for 8/1/18 - 8/26/19

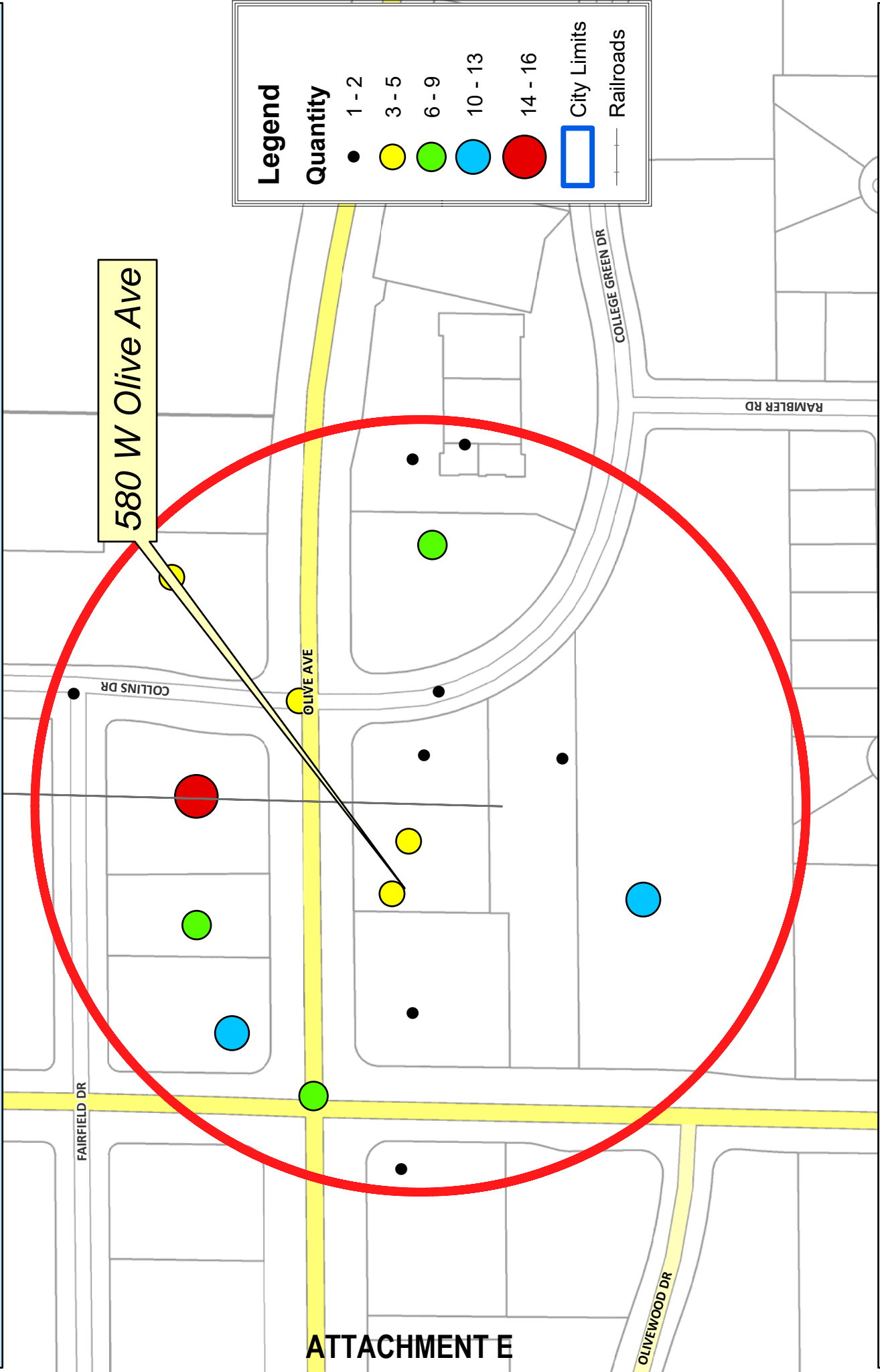


ATTACHMENT D

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.

INCIDENTS within 500ft of 580 W Olive Ave for 8/1/18 - 8/26/19

83,000+ incidents city wide



580 W Olive Ave

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Beer Delivery Pilot – California

May 8th – July 8th



Overview

Coming soon, Pizza Hut will offer customers the option to order beer along with their pizza & wings! THIS OPTION IS ONLY AVAILABLE TO CUSTOMERS 21 YEARS OR OLDER. CUSTOMERS ORDERING BEER WILL NEED TO PROVIDE A VALID STATE OR FEDERALLY ISSUED ID (E.G., DRIVER'S LICENSE OR PASSPORT) TO THE DELIVERY DRIVER AND SIGN THE REQUIRED RECORD OF DELIVERY.

Beer delivery will begin May 8th. The following products will be available (check with your organization regarding which products your restaurant will carry):

- Coors Light
- Miller Highlife
- Blue Moon
- Corona
- Bud Light
- Stella Artois

Note: Beer can be ordered in 2-packs or 6-packs

Telephone

CUSTOMERS WILL BE ABLE TO ORDER BEER FOR DELIVERY OR CARRYOUT. IF THE CUSTOMER IS INTERESTED IN ORDERING BEER WITH THEIR ORDER, IT IS CRITICAL TO CONFIRM THAT THE CUSTOMERS KNOW THAT THEY MUST COMPLY WITH THE FOLLOWING STATE LEGAL REQUIREMENTS:

- Be at least 21 years old.
- At the time of delivery, present the delivery driver with a state or federal ID, such as a Driver's License or Passport.
- Sign the Form provided to the customer by the delivery driver.

Order Entry Process:

- Select Beer class
- Select 2pk Btls or 6pk Btls
- Select flavor:
 - Coors Light
 - Miller Highlife
 - Blue Moon
 - Corona
 - Bud Light
 - Stella Artois

Delivery Drivers

In order to deliver beer delivery drivers must be at least 18 years old, have successfully completed any state required alcohol service training, and follow this process:

- Beer must be delivered using the new dedicated cold pouches.
- For orders that include beer, the delivery driver will need to take the clipboard with the Form that must be completed at the time of delivery.
- Prior to handing the customer the beer, delivery drivers must look at the customer's proper ID to verify the customer is at least 21 years old, and complete the following information on the form:
 - Driver name and signature
 - Customer's name, ID type, and customer's signature.
- After the delivery driver completes the Form, delivery driver will hand the customer the completed Form on the clipboard and a pen to sign the Form. If applicable, credit card receipts should be included on the clipboard for customers to sign.
- If customers have questions regarding the Form, there is a customer information sticker on the back of the clipboard.
- When cashing out a delivery that includes beer, staple the completed form to the guest check and place in the appropriate location to be stored for 2 years.

Never deliver beer to customers who do not provide appropriate ID or appear to be already intoxicated. In such cases, return beer to restaurant and complete the refusal of delivery Form. Consult with your ARL to discuss your organization's procedures for handling the return of product, including crediting customer's credit card (if applicable) and how the driver should address the customer in such situations.

Management Information

Available Products (check with your organization for specifics regarding which products your restaurant will carry)

Beer will be delivered in cases containing 6-packs of bottles. Fill in the ordering item number below from your distributor

Beer Brand	Item Number
Coors Light	_____
Miller Highlife	_____
Blue Moon	_____

Beer Brand	Item Number
Corona	_____
Bud Light	_____
Stella Artois	_____

Storage:

- Beer must be held in the walk-in cooler or Visi-cooler between 31°F - 41°F.
- Contact your Above Restaurant Leader if inventory is running low before the next scheduled delivery.
- Beer will be inventoried by 'each' in FMS (6 for beer 6-pack carrier).
- Inventory should be completed each evening on all beer

Delivery Procedures:

- DO NOT DISPATCH DELIVERY ORDERS CONTAINING BEER OR WINE TO ANY DELIVERY DRIVER WHO IS YOUNGER THAN 18 YEARS OLD. THE DISPATCH SCREEN WILL SHOW A BEER ICON FOR DELIVERIES THAT INCLUDE BEER
- ENSURE THE DELIVERY DRIVER WHO IS DISPATCHED WITH ORDERS CONTAINING BEER HAS THE CLIPBOARD WITH THE ATTACHED FORM.
- Circle the type of beer & proof on the Form before the driver leaves the restaurant to reduce the amount of time the driver will need to spend entering this information during the delivery.
- Use the new dedicated beer delivery pouches for every delivery as these pouches are designed to keep the refrigerated beer below 45°F for up to one hour.



Required Form:

- Ensure Form is completed correctly when cashing out delivery drivers. If a delivery driver returns without all customer information documented or the Form signed, the delivery driver must return to the customer in order to complete all of the required information.
- Attach the Form to its corresponding guest check and keep Forms in the alcohol weekly folder. These Forms must be retained at the restaurant for 2 years.
- IF THE DELIVERY DRIVER WAS UNABLE TO COMPLETE ANY BEER DELIVERY DUE TO CUSTOMER INTOXICATION OR CUSTOMER NOT PROVIDING PROPER ID, IT MUST BE DOCUMENTED ON THE 'REFUSAL OF DELIVERY' FORM.

Marketing materials arrive by May 7:

- Box Toppers
- Counter Cards (optional)
- Targeted local social media
- Window Cling (optional)

Question 1: An adult enters the restaurant and places a delivery order which includes beer. When the order is delivered to the home or business and someone else receives the order, should the beer be delivered?

Question 2: A parent places an order (which includes beer) for delivery. Upon delivery the children have the money and the parent's ID. Do we deliver the beer?

*Answer to Question 1 & 2: You follow the same principles for checking ID for beer purchases for delivery orders as you would for dine-in orders. Refer to the Delivery Drivers section of the 'Beer Pilot CA' file and it explains 'before the Driver hands over the beer' the Driver must check the person's ID to ensure they are 21 or older. So whether a parent pays for the order in the store to be delivered later or a child answers the door when the delivery arrives it is the ID of the person the Driver hands over the beer that the Driver must verify. **You check the ID of the person you are handing over the beer.** In addition the Driver fills out the form by documenting their name and signature in addition the Driver documents the customer's name, ID type and customer's signature. And by 'customer' I'm referring to the person you hand over the beer whether there is another name on the guest check, another person called in the order or another person handing over the money.*

Question 3: When making a delivery (which includes beer) the person paying (for whatever reason) does not have ID, can the person provide a picture ID like a college picture ID?

Answer to Question 3: A simple picture ID does not qualify as the proper ID to verify if someone is 21 or older. The proper ID includes the following:

- *Must be issued by a government agency (federal, state, city or county).*
- *ID must include Name; Date of Birth; Description (sex, hair, eye, weight, and height); Photograph; and Currently Valid.*

Question 4: If Driver returns from a delivery without filling out the beer delivery form and/or does not obtain signature. Can the Driver return to the delivery location and obtain the missing information?

*Answer to Question 4: There are no exceptions to not filling out the beer delivery form at the time of the delivery. If the Driver forgets the form or does not fill out the form the beer is not delivered. **Completing the form at the time of the delivering the beer is non-negotiable.***

Question 5: Can Team Members that are not working order beer to be delivered?

Answer to Question 5: Yes, but there is no employee discount on beer. It is against the law to discount/coupon off alcohol. Follow the same procedures for checking identification and filling out the beer delivery form for Team Members.

Question 6: If a customer is given a future credit and their next order includes beer can they use the future credit against the cost of the beer?

*Answer to Question 6: **No alcohol can be discounted in any form whether a manual discount, employee discount, coupon or future credit.** It is programmed in the SUS not to apply any discounts on alcohol. Even if you have a \$20 future credit in the system for a customer the SUS will not allow you to apply the credit toward the purchase of beer. I want to make it crystal clear that it is against Alcoholic Beverage Control (ABC) regulation to discount alcohol.*

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 #1233 (Environmental Review #19-22)

Project Applicant: Gelt Holdings Inc., DBA Pizza Hut

Project Location (Specific): 580 W. Olive Ave. **APN:** 007-250-022

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: Gelt Holdings Inc., DBA Pizza Hut

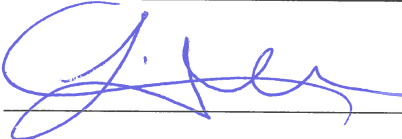
Exempt Status: (check one)

- 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, 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:** 9-3-2019 **Title:** Associate 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 October 9, 2019, held a public hearing and considered **Conditional Use Permit #1233**, initiated by Gelt Holdings, Inc., on behalf of Shemoil Moradzadeh, property owner. This application involves request to allow for the delivery and sale of beer and wine for on-site consumption within a restaurant (Pizza Hut) located at 580 W. Olive Avenue. The subject site is generally located on the south side of Olive Avenue, approximately 200 feet east of M Street, within Planned Development (P-D) #4, with a Neighborhood Commercial (CN) General Plan designation; also known as Assessor's Parcel Number (APN) 007-250-022; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #19-23; 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 #19-22, and approve Conditional Use Permit #1233, 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)

PLANNING COMMISSION RESOLUTION # _____

Page 2

October 9, 2019

Adopted this 9th day of October 2019.

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval
Planning Commission Resolution # _____
Conditional Use Permit #1233

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment B of Staff Report #19-23.
2. All conditions contained in Resolution #1249 (“Standard Conditional Use Permit Conditions”) shall apply.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. 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.
5. 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.

6. Alcoholic beverages service in the outdoor patio area is being approved with this permit.
7. Signs shall be posted on the fence stating “No Alcohol Allowed Outside This Area.” The signs shall be a maximum of 1 square foot and shall be posted on each side of the outdoor patio area in an area visible to customers.
8. No temporary signs shall be attached to the metal fence. All temporary signs shall be approved and a “Temporary Sign Permit” shall be obtained prior to installation.
9. An employee shall monitor the outdoor patio area at all times when alcohol is being served.
10. Exterior doors shall not be propped open during business operations. If sufficient complaints are received regarding noise from music or other activities, the restaurant shall provide a means for suppressing the noise coming from the building. The means and method used to suppress noise shall be approved by the Building Department prior to installation.
11. Any music played over outdoor speakers in the patio area shall be kept to a minimum so as not to travel outside the immediate area around the restaurant.
12. Sufficient lighting shall be provided throughout the outdoor patio area. A lighting plan shall be included with the building permit application for the patio.
13. Receptacles for the disposal of smoldering remnants and discarded debris associated with smoking tobacco products (such as ashes and cigarette butts) shall be made available in the patio. The receptacles shall be included in the plans for the patio.
14. Any outdoor heating units shall need to be listed and approved by the Fire Department.
15. The restaurant shall meet all applicable Merced County Health Department requirements.
16. The restaurant shall meet all applicable Alcoholic Beverage Control requirements.

17. This approval is for alcohol sales as an ancillary use to the primary restaurant only.
18. Alcohol deliveries shall comply with all relevant regulations required by the Department of Alcoholic Beverage Control, and the Merced County Environmental Health Department.
19. Any 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).
20. 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.
21. The applicant shall work with the City's Refuse Department to determine if a recycling container would be required and if additional bins or an increase in frequency of refuse service is required to accommodate this use.

n:shared:planning:PC Resolutions: CUP #1232 Exhibit A